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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6138; Airspace Docket No. 16–AEA–3]

Amendment of Class E Airspace; Indiana, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Indiana, PA, to accommodate the new runway at Indiana County Airport (Jimmy Stewart Field). This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Indiana County Airport (Jimmy Stewart Field), Indiana, PA.

History

On June 24, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace extending upward from 700 feet above the surface at Indiana County Airport (Jimmy Stewart Field), Indiana, PA, (81 FR 41279) Docket No. FAA–2016–6138, to accommodate the new runway at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Indiana County Airport (Jimmy Stewart Field), Indiana, PA, with a segment extending from the 8.2-mile radius to 13.6 miles east of the airport.

Airspace reconfiguration is necessary to support the new runway, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Indiana, PA [Amended]

Indiana County Airport (Jimmy Stewart Field), PA
(Lat. 40°37′52″ N., long. 79°06′05″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Indiana County Airport (Jimmy Stewart Field), and within 2-miles each side of the 096° bearing of the airport, extending from the 8.2-mile radius to 13.6 miles east of the airport.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–22749 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5444; Airspace Docket No. 16–ANE–1]

Amendment of Class D and E Airspace, Falmouth, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace designated as an extension at Cape Cod Coast Guard Air Station, (formerly Otis ANGB), Falmouth, MA, as the Otis TACAN has been decommissioned, requiring airspace reconfiguration. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport in the existing Class D and E airspace areas, as well as Falmouth Airpark, Barnstable Municipal Airport-Boardman/Polando Field, Chatham Municipal Airport, Martha's Vineyard Airport, (formerly Martha's Vineyard Municipal Airport), and the BOGEY LOM.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D airspace and Class E airspace at Cape Cod Coast Guard Air Station, Falmouth, MA.

History

On June 21, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace and Class E airspace designated as an extension at Cape Cod Coast Guard Air Station, Falmouth, MA, (81 FR 40215) Docket No. FAA–2016–5444 as the Otis TACAN has been decommissioned, requiring airspace reconfiguration. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the geographic coordinates of the BOGEY LOM were incorrect. This action makes the correction.

Class D airspace and Class E airspace designations are published in paragraphs 5000, 6004, and 6005 respectively of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace designated as an extension at Cape Cod Coast Guard Air Station, Falmouth, MA, realigning the segment extensions from the 4.4-mile radius of the airport to 6 miles northeast, 6 miles southeast, 7 miles southwest, and 6 miles northwest of the airport. Additionally, this action notes adjustment of the geographic coordinates of the above airport, as well as Falmouth Airpark, Barnstable Municipal Airport–Boardman/Polando Field, Chatham Municipal Airport, Martha's Vineyard Airport, and corrects the BOGEY LOM navigation aid, to coincide with the FAAs aeronautical database. Also, this action recognizes the name change of Cape Cod Coast Guard Air Station, (formerly OTIS ANGB), and Martha's Vineyard Airport, (formerly Martha's Vineyard Municipal Airport).

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE MA D Falmouth, MA [Amended]

Cape Cod Coast Guard Air Station, MA
(Lat. 41°39′33″ N., long. 70°31′22″ W.)
Falmouth Airpark
(Lat. 41°35′08″ N., long. 70°32′25″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.4-mile radius of Cape Cod Coast Guard Air Station, excluding that airspace within a 1-mile radius of Falmouth Airpark.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ANE MA E4 Falmouth, MA [Amended]

Cape Cod Coast Guard Air Station, MA
(Lat. 41°39′33″ N., long. 70°31′22″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the 55° bearing from the Cape Cod Coast Guard Air Station, extending from the 4.4-mile radius of the airport to 6 miles northeast of the airport, and within 1.8 miles each side of the 143° bearing from the airport, extending from the 4.4-mile radius to 6 miles southeast of the airport, and within 1.8 miles each side of the 234° bearing from the airport, extending from the 4.4-mile radius to 7 miles southwest of the airport, and within 1.8 miles each side of the 323° bearing from the airport, extending from the 4.4-mile radius to 6 miles northwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE MA E5 Falmouth, MA [Amended]

Cape Cod Coast Guard Air Station, MA
(Lat. 41°39′33″ N., long. 70°31′22″ W.)
Barnstable Municipal Airport Boardman/Polando Field
(Lat. 41°40′10″ N., long. 70°16′49″ W.)
Chatham Municipal Airport
(Lat. 41°41′18″ N., long. 69°59′23″ W.)
Martha's Vineyard Airport
(Lat. 41°23′36″ N., long. 70°36′50″ W.)
Martha's Vineyard VOR/DME
(Lat. 41°23′46″ N., long. 70°36′46″ W.)
BOGEY LOM
(Lat. 41°42′58″ W., long. 70°12′11″ W.)

That airspace extending upward from 700 feet above the surface within a 12.2-mile radius of Cape Cod Coast Guard Air Station, and within a 6.7-mile radius of Barnstable Municipal Airport, and within 3 miles each side of the BOGEY LOM 050° bearing extending from the 6.7-mile radius to 10 miles northeast of the BOGEY LOM, and within a 6.3-mile radius of Chatham Municipal Airport, and within a 6.5-mile radius of Martha's Vineyard Airport, and within 5.1 miles on each side of the 052° radial of Martha's Vineyard VOR/DME extending from the 6.5-mile radius to 14 miles northeast of Martha's Vineyard VOR/DME.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center Air Traffic Organization.

[FR Doc. 2016–22748 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4513; Airspace Docket No. 15–AEA–8]

Amendment of Class D and Class E Airspace; Hagerstown, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace Designated as an Extension to a Class D Surface Area by eliminating the Notice to Airmen (NOTAM) part time status for Hagerstown Regional Airport-Richard A. Henson Field, Hagerstown, MD, for the safety and management of IFR operations. Also, this action recognizes the name change to Hagerstown Regional Airport-Richard A. Henson Field, (formerly Washington County Regional Airport), Hagerstown, MD, and updates the geographic coordinates of the airport listed in Class D and E airspace.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at Hagerstown Regional Airport-Richard A Henson Field, Hagerstown, MD.

History

On February 4, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E Airspace Designated as an Extension to a Class D Surface Area at Hagerstown Regional Airport-Richard A Henson Field, Hagerstown, MD, (81 FR 5949) Docket No. FAA–2015–4513, by eliminating the NOTAM information, and changing the airport name and geographic coordinates. This action also amends the Class E Surface Area Airspace, previously omitted, for the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 6, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E Airspace designated as an extension to a Class D surface area at Hagerstown Regional Airport-Richard A. Henson Field, Hagerstown, MD, by eliminating the NOTAM information from the regulatory text that reads, "This Class E airspace area is effective during the specific dates and time established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." This action also changes the airport name and ILS Localizer from Washington County Regional Airport to Hagerstown Regional Airport-Richard A. Henson Field, and adjusts the geographic coordinates of the airport in existing Class D and Class E Airspace.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA MD D Hagerstown, MD [Amended]

Hagerstown Regional Airport-Richard A. Henson Field, MD
(Lat. 39°42′31″ N., long. 77°43′35″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.1-mile radius of Hagerstown Regional Airport-Richard A. Henson Field. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

AEA MD E2 Hagerstown, MD [Amended]

Hagerstown Regional Airport-Richard A. Henson Field, MD
(Lat. 39°42′31″ N., long. 77°43′35″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Hagerstown Regional Airport-Richard A. Henson Field. This Class E airspace area is effective during the specific dates and times when the Class D airspace area, as published in the Chart Supplement, is not in effect.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

AEA MD E4 Hagerstown, MD [Amended]

Hagerstown Regional Airport-Richard A. Henson Field, MD
(Lat. 39°42′31″ N., long. 77°43′35″ W.)
Hagerstown VOR
(Lat. 39°41′52″ N., long. 77°51′21″ W.)
Hagerstown Regional Airport-Richard A Henson Field ILS Runway 27 Localizer
(Lat. 39°42′22″ N., long. 77°44′41″ W.)

That airspace extending upward from the surface within 2.7 miles each side of the Hagerstown VOR 237° radial and 057° radial extending from 7.4 miles southwest of the VOR to 1.8 miles northeast of the VOR, and within 2.7 miles each side of the Hagerstown VOR 082° radial extending from the 4.1-mile radius of Hagerstown Regional Airport-Richard A Henson Field to the VOR, and within 4 miles each side of the Hagerstown Regional Airport-Richard A. Henson Field ILS Runway 27 localizer course extending from the localizer to 11.8 miles east of the localizer, excluding that portion within Prohibited Area P–40.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA MD E5 Hagerstown, MD [Amended]

Hagerstown Regional Airport-Richard A. Henson Field, MD
(Lat. 39°42′31″ N., long. 77°43′35″ W.)
Hagerstown VOR
(Lat. 39°41′52″ N., long. 77°51′21″ W.)
St. Thomas VORTAC
(Lat. 39°56′00″ N., long. 77°57′03″ W.)
Hagerstown Regional Airport-Richard A. Henson Field ILS Runway 27 Localizer
(Lat. 39°42′22″ N., long. 77°44′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Hagerstown Regional Airport-Richard A. Henson Field, and within 3.1 miles each side of the Hagerstown VOR 237° radial and 057° radial extending from 9.6 miles southwest of the VOR to 2.7 miles northeast of the VOR, and within 4.4 miles each side of the Hagerstown Regional Airport-Richard A. Henson Field ILS Runway 27 localizer course extending from the localizer to 12.6 miles east of the localizer, and within 4.4 miles each side of the St. Thomas VORTAC 141° radial extending from the 6.6-mile radius to the St. Thomas VORTAC, excluding that portion within Prohibited Area P–40.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–22744 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6134; Airspace Docket No. 16–ASO–8]

Amendment of Class E Airspace; Glasgow, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Glasgow, KY as the Beaver Creek Non-Directional Beacon (NDB) has been decommissioned, requiring airspace reconfiguration at Glasgow Municipal Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Glasgow Municipal Airport, Glasgow, KY.

History

On June 21, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (81 FR 40217) Docket No. FAA–2016–6134, to amend Class E airspace extending upward from 700 feet above the surface at Glasgow Municipal Airport, Glasgow, KY, as the Beaver Creek Non-Directional Beacon (NDB) has been decommissioned, requiring airspace reconfiguration at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to within a 7.4-mile radius of Glasgow Municipal Airport, Glasgow, KY, and removes the segment extending 7 miles west of the NDB. Airspace reconfiguration is necessary due to the decommissioning of the Beaver Creek NDB, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Glasgow, KY [Amended]

Glasgow Municipal Airport, KY
(Lat. 37°01′54″ N., long. 85°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Glasgow Municipal Airport.

Issued in College Park, Georgia, on September 7, 2016.

Joey L. Medders,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–22746 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2016–0015]

RIN 0960–AH92

Evidence From Excluded Medical Sources of Evidence

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: In accordance with section 812 of the Bipartisan Budget Act of 2015 (BBA section 812), these rules explain how we will address evidence furnished by medical sources that meet one of BBA section 812's exclusionary categories (excluded medical sources of evidence) as described below. Under these new rules, we will not consider evidence furnished by an excluded medical source of evidence unless we find good cause to do so. We identify five circumstances in which we may find good cause. In these rules, we also require excluded medical sources of evidence to notify us of their excluded status under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, in writing each time they furnish evidence to us that relates to a claim for initial or continuing benefits under titles II or XVI of the Act. These rules will allow us to fulfill obligations that we have under BBA section 812.

DATES: These final rules will be effective on November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On June 10, 2016, we published a notice of proposed rulemaking (NPRM) in which we proposed to implement BBA section 812 by adding new sections to our rules that would explain when we would not consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended.[1] We also identified five circumstances in which we proposed to find good cause to consider evidence that would otherwise be excluded. In addition, we proposed to require that excluded medical sources of evidence notify us of their excluded status under section 223(d)(5)(C)(i) of the Act, as amended, in writing, each time they furnish evidence to us in relation to a claim for initial or continuing benefits under titles II or XVI of the Act. We are adopting these proposed rules as final rules.

Congress enacted the BBA on November 2, 2015.[2] BBA section 812 amended section 223(d)(5) of the Act, 42 U.S.C. 423(d)(5), by adding a new paragraph "C." Under this provision, when we make a disability determination or decision or when we conduct a continuing disability review (CDR) under titles II or XVI of the Act, we cannot consider evidence furnished by certain medical sources unless we have good cause.[3] Under these new rules, we may find good cause to consider evidence furnished by an excluded medical source of evidence in the following five situations:

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[1] Public Law 114–74, sec. 812, 129 Stat. 584, 602; 81 FR 37557.

[2] Public Law 114–74, 129 Stat. 584.

[3] Public Law 114–74, sec. 812, 129 Stat. 584, 602. The exclusion of evidence under BBA section 812 does not constitute an exclusion of a medical source from Social Security programs under section 1136 of the Act, 42 U.S.C. 1320b–6.

- The evidence furnished by the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;
- the evidence furnished by the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;
- the evidence furnished by the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty (CMP), assessment, or both, for submitting false evidence under section 1129 of the Act;
- the sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services (HHS' OIG) granted a waiver of the section 1128 exclusion; or
- the evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

We may find good cause to consider evidence furnished by an excluded medical source of evidence in any of these five enumerated situations when we make a disability determination or decision or when we conduct a CDR.

As we stated in our NPRM, our long-term solution to the administration of BBA section 812 is to implement automated evidence matching within our case processing system(s) to identify excludable evidence. As part of our efforts to comply with BBA section 812's implementation deadline of November 2, 2016, we will require that excluded medical sources of evidence inform us in writing of the facts or event(s) triggering BBA section 812 each time they submit evidence to us that relates to a claim for initial or continuing benefits under titles II or XVI of the Act.

Regarding the content of the written statement, excluded medical sources of evidence will be required to include a heading that states,

WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE.

Immediately following this heading, sources will also need to include their name, title, and the applicable event(s) that triggered the application of BBA section 812. Sources convicted of a felony under section 208 or 1632 of the Act will also need to provide the date of their felony conviction. Similarly, sources that have been imposed with a CMP, an assessment, or both for submitting false evidence under section 1129 of the Act will need to provide the date of the final imposition of the CMP, assessment, or both. Sources that cannot participate in any Federal health care program under section 1128 of the Act will need to include the basis for the exclusion, its effective date and anticipated length, and whether HHS' OIG waived it.

Our reporting requirement will apply only to excluded medical sources of evidence that furnish evidence to us directly or indirectly through a representative, claimant, or other individual or entity. Further, we will require that no individual or entity be permitted to remove an excluded medical source of evidence's written statement prior to submitting the source's evidence to us. We also reserve the right to request that excluded medical sources of evidence provide additional information or clarify any information they submit regarding the circumstances or events that trigger section 223(d)(5)(C)(i) of the Act, as amended. If excluded medical sources of evidence do not inform us of their excluded status, we may refer them to our Office of the Inspector General for any action it deems appropriate, including investigation and CMP pursuit.

Additional information and discussion can be found in the preamble to our NPRM.[4]

Public Comments and Discussion

On June 10, 2016, we published an NPRM in the **Federal Register** at 81 FR 37557 and provided a 60-day comment period. We received six timely submitted comments that addressed issues within the scope of our proposed rules. Below, we present all of the views received and address all of the relevant and significant issues raised by the commenters. We carefully considered the concerns expressed in these comments, but did not make any changes to our rules as a result of the comments.

Comment: One commenter expressed concern about our excluding evidence furnished by an excluded medical source of evidence relating to a claim for initial or continuing benefits under titles II or XVI of the Act. The commenter asserted that such a procedure is inconsistent with the rules of evidence of most states and the Federal courts. Specifically, the commenter stated that "[t]ypically, the question is not whether the opinion is admissible, but what weight should be given to each opinion."

Response: Our disability determination procedures are governed by the Act and the rules we issue under the authority mandated in the Act, rather than the rules of evidence in State or Federal court.[5] Section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812, mandates that, absent good cause, we may not consider evidence furnished by certain sources of evidence. Our new rules identify the five situations where we may find good cause to consider evidence furnished by excluded medical sources of evidence. The rules we are adopting here are required by, and are consistent with, section 223(d)(5)(C)(i) of the Act.

Comment: One commenter generally approved of our rules, but sought clarification about whether we would impose sanctions against an excluded medical source of evidence prior to the source's conviction.

Response: These rules do not impose sanctions on excludable medical sources of evidence prior to the source's conviction or other excludable event. These rules, however, do not in any way limit our ability to seek to impose sanctions under other authority granted by the Act or our rules. As required by section 223(d)(5)(C)(i) of the Act, our new rules require us to exclude evidence furnished by excluded medical sources of evidence unless we find good cause to consider that evidence. They also require excluded medical sources of evidence to inform us in writing of their excluded status each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act, prohibit any other individual or entity from removing that written statement prior to submitting the source's evidence to us, and permit us to seek clarification or additional information from the excluded medical source of evidence regarding that written statement. Additionally, nothing in these new rules affects our ability under sections 404.988(c)(1) and 416.1488(c) of our rules, 20 CFR 404.988(c)(1), 416.1488(c), to reopen at any time a determination or decision obtained by fraud or similar fault.

Comment: One commenter asked how we would handle evidence furnished by a medical source that later became an excluded medical source of evidence.

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[4] 81 FR 37557.

[5] Section 205 of the Act, 42 U.S.C. 405; 20 CFR 404.1501, *et seq.*, 416.901, *et seq.* Under section 205(b)(1) of the Act, 42 U.S.C. 405(b)(1), the rules of evidence that apply in court proceedings do not apply to our determinations or decisions.

Response: Our good cause exceptions are relevant to this comment. We will consider evidence furnished by a medical source that later becomes an excluded medical source of evidence if that treatment occurred (1) before the source was convicted of a felony under sections 208 or 1632 of the Act, (2) outside the period the source was excluded from participating in any Federal health care program under section 1128 of the Act, or (3) before the source received a final decision imposing a CMP, assessment, or both, for submitting false evidence under section 1129 of the Act. If a medical source later becomes an excluded medical source of evidence and furnishes additional evidence to us, the source will be required to include a written statement of excluded status with the additional furnished evidence.

Comment: One commenter sought clarification about whether we would notify a claimant of our exclusion of evidence furnished by an excluded medical source of evidence where no good cause exception applied.

Response: We will use the appropriate determination or decisional notice to inform a claimant of our exclusion of evidence furnished by an excluded medical source of evidence where no good cause exception applies.

Comment: Three commenters generally supported our rules, but they requested that we expand the scope of our fifth good cause exception, which permits us to consider laboratory findings about a physical impairment when there is no indication that the findings are unreliable. The commenters proposed that we expand the scope of this exception to include laboratory findings about a mental impairment and signs about physical or mental impairments.

Response: We are not adopting the requests that we expand the scope of our fifth good cause exception from laboratory findings about a physical impairment to laboratory findings about a physical or mental impairment and signs about a physical or mental impairment. We are not including signs in this exception because they require more subjective interpretation by an excluded medical source of evidence than do laboratory findings about physical impairments. Laboratory findings are based on the use of medically acceptable diagnostic techniques, including blood tests, biopsies, and x-rays. Signs, in contrast, are abnormalities that can be observed apart from a claimant's statements. They would include, for example, an excluded medical source of evidence's observation and report that a claimant walked with a limp, had decreased range of motion, or showed decreased strength. We believe that including these types of observations and reports in our fifth good cause exception would not be in keeping with section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812. Generally, the events that trigger application of BBA section 812 (felony conviction under section 208 or 1632; exclusion under section 1128, or CMP for submitting false evidence under section 1129) can be viewed as implicating issues of honesty, integrity, and professional conduct and competence. For example, medical sources that fall under section 223(d)(5)(C)(i) of the Act, as amended, include sources (1) convicted of a felony under section 208 or 1632 of the Act for making a false statement of material fact used to determine a claimant's right to a disability payment, (2) excluded from participating in any Federal health care program under section 1128(a)(3) of the Act based on a felony conviction related to health care fraud, and (3) imposed with a CMP for submitting false evidence to us. Thus, because signs rely more heavily on what the excluded medical source of evidence observes and reports than laboratory findings do, we believe it would be inappropriate to include them in our fifth good cause exception.

We also note that we are not entirely barring signs furnished by an excluded medical source of evidence. If such evidence meets one or more of the other enumerated good cause exceptions, we may consider that evidence.

For similar reasons, we also believe it would be inappropriate to add laboratory findings about a mental impairment to the fifth good cause exception. As we previously stated, we created a good cause exception for laboratory findings about a physical impairment because we believe such findings to be objective, reliable, and reproducible tests that require the least amount of subjective interpretation by a medical source. In contrast, our rules explain that standardized psychological tests consist of "standardized sets of tasks or questions designed to elicit a range of responses." [6] As such, we believe these tests do not have the same level of reproducibility as laboratory findings about a physical impairment because they require more subjective interpretation by the excluded medical source of evidence. Specifically, the excluded medical source of evidence has to ask the questions or direct the tasks, observe the responses, and accurately report those responses. Conversely, laboratory findings related to a physical impairment include tests such as blood tests, biopsies, and x-rays, which we believe to be more reproducible by medical sources not subject to section 223(d)(5)(C)(i) of the Act, as amended, because they require little subjective interpretation. Thus, similar to signs, because standardized psychological tests may depend, at least in part, on what the excluded medical source of evidence observes and reports than do laboratory findings about a physical impairment, we believe they are less reproducible and should not be included in our fifth good cause exception.

In addition, we disagree with the commenters' assertion that we would exclude a laboratory finding about a physical impairment in the evaluation of a mental impairment. Nothing in this good cause exception limits how or for what purpose we may consider evidence to which the exception applies. Absent any evidence of unreliability, we may use laboratory findings about a physical impairment as appropriate, including but not limited to, evaluating the severity of a claimant's mental impairment(s).

As is the case for signs, we are not entirely barring laboratory findings about a mental impairment furnished by an excluded medical source of evidence. If such evidence meets one or more of the other enumerated good cause exceptions, we may consider that evidence.

Finally, we note that even though we will be required to exclude evidence unless a good cause exception applies, section 223(d)(5)(C) of the Act, as amended by BBA section 812, does not limit our ability to purchase a consultative examination, if appropriate under our rules.[7]

Comment: Three commenters asked us to clarify several points related to our rules. They first sought clarification that we would automatically apply good cause exceptions when circumstances dictated, and that a claimant or representative would not need to request that we apply an exception.

Response: We will automatically apply the good cause exceptions. In our rules, we specifically state in subsection (a) that we will not consider evidence furnished by an excluded medical source of evidence unless we find good cause. Likewise, in subsection (b), which sets forth the good cause exceptions, we again state that we may find good cause, and therefore apply the applicable exception.

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[6] 20 CFR part 404, subpart P, app. 1, section 12.00D.5.b.

[7] 20 CFR 404.1519a, 404.1519b, 416.919a, 416.919b.

Comment: Second, the commenters asked us to explain how we would notify claimants and representatives about our exclusion of evidence furnished by an excluded medical source of evidence so that they could contest the exclusion.

Response: We will use the appropriate determination or decisional notice to inform a claimant and representative of our evaluation of evidence furnished by an excluded medical source of evidence. A claimant or representative may raise in a request for reconsideration, hearing before an administrative law judge, or Appeals Council review, an issue regarding our evaluation of this evidence.

Comment: Third, the commenters requested that we clarify that we would hold claimants and representatives harmless if they submitted evidence furnished by an excluded medical source of evidence that did not include the written statement required under our rules, even if it was later determined that such a statement should have been included.

Response: We generally agree with the commenters that we would not hold a claimant or representative responsible for submitting evidence furnished by an excluded medical source of evidence that did not include the written statement required under our rules, even if it was later determined that such a statement should have been included. We reiterate, however, that no individual or entity may remove the written statement required under our rules prior to submitting evidence furnished by an excluded medical source of evidence to us. We further make clear that should a claimant or representative violate this provision, we reserve the right to take any appropriate actions under any relevant statute, regulation, ruling, or procedural policy.

Comment: Two of the commenters asked that we create a public list of excluded medical sources of evidence that would also include treatment dates for each source that might be subject to a good cause exception. The commenters reasoned, "This will be of assistance to claimants who are deciding which providers to use or attempting to assess the viability of their claims."

Response: We are not adopting the suggestion for several reasons. First, we are not the originating source of information about individuals or entities that are convicted of felonies under sections 208 or 1632 of the Act; excluded from participating in any Federal health care program under section 1128 of the Act; and subject to CMPs, assessments, or both, for submitting false evidence under section 1129 of the Act. BBA section 812 requires our OIG and HHS to transmit information to us related to excluded medical sources of evidence. Therefore, if we were to create such a list, there would be risk that we could not update it regularly or quickly enough to reflect additions or removals as they happen. Further, even if a provider is an excluded medical source of evidence, we may consider evidence from that source under our fifth good cause exception—laboratory findings about a physical impairment where there is no indication of unreliability. Creating a list of excluded sources could prove disadvantageous to claimants because it would not include information pertaining to this fifth good cause exception, which depends on a particular type of evidence, not when the evidence is dated. Hence, we are not adopting this suggestion.

Comment: One commenter suggested that we add a sixth, catch-all, good cause exception to be used at our discretion.

Response: We are not adopting the commenter's suggestion that we add a sixth, catch-all good cause exception to be used at our discretion. Section 223(d)(5)(C)(i) of the Act, as amended by BBA section 812, prohibits us from considering evidence furnished by an excluded medical source of evidence unless we find good cause to do so. We believe that a broad, catch-all exception would be inconsistent with section 223(d)(5)(C)(i) of the Act, as amended. Instead, we believe the five good cause exceptions that we have enumerated in our rules strike the appropriate balance between complying with section 223(d)(5)(C)(i) of the Act, as amended, and permitting claimants to prove that they are disabled under our rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB has not reviewed them.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities. The only economic impact on small entities from these rules results from BBA section 812's requirement that we not consider evidence furnished by excluded medical sources of evidence. As described above and in our Paperwork Reduction Act statement, below, we will require excluded medical sources of evidence to provide us with a brief self-report containing basic information each time they furnish evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

On June 10, 2016, when SSA published an NPRM at 81 FR 37557 for the provisions we are now finalizing in this rule, we also solicited comment under the Paperwork Reduction Act for an associated Information Collection Request (ICR). In that solicitation, we asked for comment on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. We did not receive any public comments in response to this solicitation, and we are not making any changes to the ICR. Accordingly, we are re-submitting the ICR to OMB, and are requesting approval for it under the Paperwork Reduction Act after publication of the Final Rule.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Add § 404.1503b to read as follows:

§ 404.1503b Evidence from excluded medical sources of evidence.

(a) *General.* We will not consider evidence from the following medical sources excluded under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) *Good cause.* We may find good cause to consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) *Reporting requirements for excluded medical sources of evidence.* Excluded medical sources of evidence (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C)(i) of the Act, as amended, each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that excluded medical sources of evidence submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Excluded medical sources of evidence must provide a written statement, which contains the following information:

(i) A heading stating: "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE"

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraph (a)(1)-(a)(3) of this section;

(iv) The date of the medical source's felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source's exclusion from participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source of evidence may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source of evidence provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C)(i) of the Act, as amended.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 4. Add § 416.903b to read as follows:

§ 416.903b Evidence from excluded medical sources of evidence.

(a) *General.* We will not consider evidence from the following medical sources excluded under section 223(d)(5)(C)(i) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) *Good cause.* We may find good cause to consider evidence from an excluded medical source of evidence under section 223(d)(5)(C)(i) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C)(i) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office

of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) *Reporting requirements for excluded medical sources of evidence.* Excluded medical sources of evidence (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C)(i) of the Act, as amended, each time they submit evidence related to a claim for initial or continuing benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that excluded medical sources of evidence submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Excluded medical sources of evidence must provide a written statement, which contains the following information:

(i) A heading stating: "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE"

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraph (a)(1)–(a)(3) of this section;

(iv) The date of the medical source's felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source's exclusion from participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source of evidence may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source of evidence provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C)(i) of the Act, as amended.

[FR Doc. 2016–22909 Filed 9–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9776]

RIN 1545–BM74

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (TD 9776) that were published in the **Federal Register** on July 22, 2016 (81 FR 47701). The temporary regulations provide guidance regarding the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property.

DATES: This correction is effective on September 23, 2016 and applicable on July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Jennifer Records at (202) 317–6853 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9776) that are the subject of this correction are under section 50 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9776) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.50–1T [Amended]

■ **Par. 2.** In § 1.50–1T:

■ 1. Paragraph (b)(3)(ii) is amended by removing the language " "Investment Credit"," and adding " "Investment Credit,"" in its place.

■ 2. Paragraph (e) *Example 1.* and *3.* are amended by removing the language "July 1, 2016." and adding "October 1, 2016." in its place.

■ 3. Paragraph (e) *Example 2.* is amended by removing the language "paragraph (e)." and adding "paragraph (e)," in its place.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016–22945 Filed 9–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9774]

RIN 1545–BM04

Method of Accounting for Gains and Losses on Shares in Money Market Funds; Broker Returns With Respect to Sales of Shares in Money Market Funds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to final regulations (TD 9774) that were published in the **Federal Register** on July 8, 2016 (81 FR 44508). The final regulations provide a simplified method of accounting for gains and losses on shares in money market funds (MMFs). The final regulations also provide guidance regarding information reporting requirements for shares in MMFs.

DATES: This correction is effective on September 23, 2016 and applicable on July 8, 2016.

FOR FURTHER INFORMATION CONTACT: Grace Cho at (202) 317–6895 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9774) that are the subject of this correction are under sections 446, and 6045 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9774) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9774), that are the subject of FR Doc. 2016–16149, is corrected as follows:

1. On page 44512, in the preamble, the first column, under the heading "*7. Accounting Method Changes*", the ninth line of the second full paragraph, the language "Proc. 2016–39 (2016–30 IRB), which" is corrected to read "Proc. 2016–39 (2016–30 IRB 164), which".

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016–22950 Filed 9–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9775]

RIN 1545–BN26

Requirement To Notify the IRS of Intent To Operate as a Section 501(c)(4) Organization; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9775) that were published in the **Federal Register** on July 12, 2016 (81 FR 45008). The final and temporary regulations are relating to the requirement, added by the Protecting Americans from Tax Hikes Act of 2015, that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Internal Revenue Code.

DATES: This correction is effective on *September 23, 2016* and applicable on July 12, 2016.

FOR FURTHER INFORMATION CONTACT: Chelsea Rubin at (202) 317–5800 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9775) that are the subject of this correction are under section 501(c)(4) of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9775) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9775), that are the subject of FR Doc. 2016–16338, is corrected as follows:

1. On page 45010, in the preamble, the first column, the tenth line of the second full paragraph, the language "2016–41, 2016–30 IRB xxxx, which" is corrected to read "2016–41, 2016–30 IRB 165, which".

2. On page 45010, in the preamble, the third column, under the paragraph heading "*5. Separate Procedure by Which an Organization May Request an IRS Determination That It Qualifies for Section 501(c)(4) Exempt Status*", the twenty-first line of the first full paragraph, the language "prescribed in Revenue Procedure 2016–" is corrected to read "prescribed in Rev. Proc. 2016–".

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–22939 Filed 9–22–16; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AB32

Payment of Premiums; Late Payment Penalty Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is lowering the rates of penalty charged for late payment of premiums by all plans, and providing a waiver of most of the penalty for plans with a demonstrated commitment to premium compliance.

DATES: *Effective date:* This rule is effective on October 24, 2016.

Applicability date: The changes made by this rule apply to late premium payments for plan years beginning after 2015.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Assistant General Counsel for Regulatory Affairs (*murphy.deborah@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026; 202–326–4400 extension 3451. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400 extension 3451.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This final rule is needed to reduce the financial burden of PBGC's late premium penalties. The rulemaking reduces penalty rates for all plans and waives most of the penalty for plans that meet a standard for good compliance with premium requirements.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to assess late payment penalties.

Major Provisions of the Regulatory Action

The penalty for late payment of a premium is a percentage of the amount paid late multiplied by the number of full or partial months the amount is late, subject to a floor of $25 (or the amount of premium paid late, if less). There are two levels of penalty, which heretofore have been 1 percent per month (with a 50 percent cap) and 5 percent per month (capped at 100 percent). The lower rate applies to "self-correction"—that is, where the premium underpayment is corrected before PBGC gives notice that there is or may be an underpayment. This final rule cuts the rates and caps in half (to ½ percent with a 25 percent cap and 2½ percent with a 50 percent cap, respectively) and eliminates the floor.

The rulemaking also creates a new penalty waiver that applies to underpayments by plans with good compliance histories if corrected promptly after notice from PBGC. PBGC will waive 80 percent of the penalty assessed for such a plan.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by title IV must pay premiums to PBGC. PBGC's premium regulations—on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007)—implement ERISA sections 4006 and 4007.

ERISA section 4007(b)(1) provides that if a premium is not paid when due, PBGC is authorized to assess a penalty up to 100 percent of the overdue amount. The statute does not condition exercise of this authority on a finding of bad faith or lack of due care; it is solely based on the failure to pay.[1] However, the fact that assessment is authorized (rather than mandated)—and thus that PBGC could choose not to exercise the authority at all—indicates that PBGC has the flexibility to assess less than the full amount of penalty authorized and to reduce or eliminate a penalty.[2]

PBGC has provided for the exercise of its authority to impose penalties in the premium payment regulation. Under § 4007.8 of the regulation, late payment penalties accrue at the rate of 1 percent or 5 percent per month (or portion of a month) of the unpaid amount, except that the smallest penalty assessed is the lesser of $25 or the amount of unpaid premium. Whether the 1-percent or 5-percent rate applies depends on whether the underpayment is "self-corrected" or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. One-percent penalties are capped by the regulation at 50 percent and 5-percent penalties at 100 percent of the unpaid amount. Although penalties can be significant in some cases, they are generally assessed in amounts far less than the statutory maximum.

This two-tiered structure provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more forbearance than those that PBGC identifies through its premium enforcement programs.

The premium payment regulation and its appendix also authorize waivers of late premium payment penalties. For example, § 4007.8(f) provides an automatic waiver for cases where premiums are not more than seven days late. The regulation and appendix also provide for waivers based on facts and circumstances and give detailed guidance about some specific grounds for waivers, such as where there is reasonable cause for the late payment.[3] PBGC may also waive penalties where it finds that there are other appropriate circumstances.[4]

On April 28, 2016 (at 81 FR 25363), PBGC published a proposed rule to reduce penalty rates for late payment of annual (flat- and variable-rate) premiums and create a new automatic waiver of 80 percent of penalties at the higher rate for plans that demonstrate good compliance.[5] PBGC sought public comment on its proposal. Four comments were received. Three commenters supported the proposal. The other commenter expressed opposition, citing the importance of plan funding and payment of premiums. PBGC believes, as discussed below, that the reduction of premium late-payment penalties it is implementing will not adversely affect premium payments; and by reducing the cost of maintaining a plan, the penalty reduction appears more likely to improve than impair plan funding.

One commenter that supported the proposal urged PBGC to go further and apply the new penalty rules to all unresolved premium penalty cases. PBGC is adhering to its proposal to apply the new rules to premiums for plan years beginning after 2015. Future applicability is a reasonable approach for all kinds of new rules, whether more lenient (as here) or stricter. And to apply the new rules to some but not all late premium payments for pre-2016 years could be seen as an inequitable approach. A plan that corrected promptly—and whose case was therefore closed—would not get the benefit of the new, lower penalties; whereas one that delayed would be subject to lower penalties if its case was still open.

However, PBGC has concluded that—in pending requests for reconsideration for pre-2016 years—it is appropriate to use its pre-existing discretionary authority to take account of good compliance and prompt correction, among other facts and circumstances. While such exercises of discretion cannot be expected to turn on the same factual analysis or provide the same result as this final rule, they represent a similar quality of consideration as that provision.

The same commenter also urged PBGC to consider similar relief on a case-by-case basis for cases that have already been resolved under pre-amendment rules. The comment focused particularly on penalties that were large and "disproportionate" (under the circumstances) and arose from "inadvertence." PBGC is not persuaded to take this course.

Because larger penalties correlate with larger premiums, larger plans, and larger employers, relief focused on larger penalties would be focused away from smaller plans and employers—at odds with PBGC's goal of reducing burden for small entities. And since virtually every failure to pay premiums timely is inadvertent, inadvertence is neither a useful nor an appropriate criterion for granting penalty relief. Further, "disproportionality" is a subtle and subjective standard that could take time to apply consistently to a large number of cases. And significantly, the principle of finality is important in avoiding perpetual uncertainty about the outcomes of disputes. PBGC considers it inappropriate to reopen cases properly closed.

PBGC's Action

PBGC is adopting the penalty relief it proposed but is clarifying the operation of the 80-percent waiver for compliant plans, as discussed below.

Reduced Penalty Rates

Over the years—especially in recent years—Congress has significantly increased PBGC premium rates. Since late payment penalties are a percentage of unpaid premium, the penalties have gone up in proportion to the increase in premiums. While it is not unfair to impose larger penalties for late payment of larger amounts, PBGC is sensitive to the fact that a penalty assessed today may be several times what would have been assessed years ago for the same acts or omissions involving a plan with the same number of participants and the same unfunded vested benefits.

PBGC has good reason to believe that smaller penalties will provide an adequate incentive for compliance by premium payers. PBGC's experience has been that compliance with the premium payment requirements is influenced primarily by the consistency of PBGC's penalty assessment activities, and only secondarily by the size of penalties assessed. PBGC observes that in most cases, a late payment is inadvertent and that assessment of a penalty sparks improvement of a plan's compliance systems whether the penalty is large or small. This experience supports the conclusion that if PBGC continues its current consistent enforcement efforts, assessing significantly lower penalties will yield a satisfactory level of compliance.

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[1] The statute provides a waiver of penalty for 60 days if PBGC finds that timely payment would cause substantial hardship, but PBGC may not grant the waiver if it appears that the plan will be unable to pay the premium within 60 days. PBGC has found no record that such a waiver has ever been granted during the agency's 40+ years of existence.

[2] In contrast, the statute requires that interest on late premiums "shall be paid" at a specified rate for the overdue period.

[3] Section 22(a) of the appendix to the premium payment regulation says that there is reasonable cause for failure to pay a premium timely if the failure arises from circumstances beyond the payer's control and the payer could not avoid the failure by the exercise of ordinary business care and prudence. Examples are provided in sections 24 and 25 of the appendix: Sudden and unexpected absence of a responsible individual, loss of records in a casualty or disaster, erroneous PBGC advice, and inability to get necessary information.

[4] See section 21(b)(5) of the appendix to the premium payment regulation.

[5] The proposal would not affect penalties for late payment of the termination premium under § 4007.13 of the premium payment regulation.

Accordingly, PBGC is cutting penalty rates and caps in half, so that the lower (self-correction) rate will be ½ percent with a 25 percent cap, and the higher rate will be 2½ percent with a 50 percent cap. PBGC is also eliminating the floor on penalty assessments, so that if the penalty assessment formula generates a penalty less than $25, it will not be automatically inflated to the floor amount.

Recognition of Good Premium Compliance

Applying a lower penalty rate to self-correction recognizes that it is desirable for a plan to catch and fix its own mistakes, whatever its compliance history may be. PBGC has given this matter further thought and concluded that a demonstrated commitment to premium compliance is also worthy of recognition, even if a plan corrects an underpayment (of which it is likely unaware) only after notice from PBGC. PBGC believes such a commitment is evidenced where a plan has a history of consistent compliance and acts promptly to correct an underpayment when notified by PBGC. PBGC will therefore automatically waive 80 percent of penalties assessed at the higher (2½-percent) rate where the following two conditions are satisfied.

The first condition is that the plan have a five-year record of premium compliance. Generally, this means timely payment of all premiums for the five plan years preceding the year of the delinquency, as shown by the plan's premium filings. However, a late payment will not count against a plan if PBGC did not require payment of a penalty, such as where there was a waiver of the entire penalty. A plan that was not in existence as a covered plan for the full five years will be judged on its coverage years.

The second condition is prompt correction. Prompt correction, for this purpose, means that the premium shortfall for which a penalty is being assessed is made good no later than 30 days after PBGC notifies the plan in writing that there is or might be a problem. In other words, a plan that meets the first condition, and is assessed penalty at the 2½-percent rate, will qualify for an automatic 80-percent reduction if the premium shortfall is paid within 30 days.

PBGC has made two clarifying changes to the proposed regulatory text describing the 80-percent waiver. The amount waived is now described as 80 percent of the amount "assessed," rather than the amount "otherwise applicable." And the amount that must have been paid by the end of the 30-day period is now described as the "total amount of premium" for the year, rather than the "amount of unpaid premium." PBGC feels that the new formulations are clearer and more definite.

Effect of Changes

PBGC typically discovers the most common premium payment errors fairly quickly—errors like failing to pay, sending payment that doesn't match the information filed, and so forth—and generally notifies plans of their delinquencies within a month or two after the due date. Thus, a plan that corrects an underpayment before or promptly after notice from PBGC typically owes no more than a few months' penalty.

For example, if a plan paid a $1 million premium two months late (after notice from PBGC), the penalty under the regulation as it existed before this amendment would be $100,000 (two months times 5 percent times $1 million). Under the revised regulation, the penalty would be $50,000 (two months times 2½ percent times $1 million). If the plan qualified for the compliant plan partial waiver, the penalty would be reduced by 80 percent, from $50,000 to $10,000.

In a typical case, the changes in this final rule will in effect make the penalty rate for compliant plans the same as the "self-correction" penalty rate. In clarification of the preamble to the proposed rule, however, this will not be true in the unusual case where a penalty cap comes into play. For while the penalty rates for self-correctors and others are in the ratio of one to five, the caps are in the ratio of one to two.

The effect of the changes is summarized in the following table on the assumption that the penalty caps do not come into play.

Good compliance history?	Monthly penalty rate if shortfall is corrected—		
	At or before date of PBGC notice	Within 30 days after PBGC notice	More than 30 days after PBGC notice
No	½ percent	2½ percent	2½ percent.
Yes	½ percent	½ percent (after waiver)	2½ percent.

Compliance With Regulatory Requirements

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is not a "significant regulatory action" under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

PBGC does not expect this final rule to cause a significant change in premium compliance patterns. As noted above, PBGC's experience is that prompt assessment, rather than amount, is the key to using penalties as a compliance tool. A reduction in the penalty cost of late payment is unlikely to reduce the incidence of late payment, but is also unlikely to encourage late payment: no penalty is better than a low penalty. Thus, the primary effect of the rule will be to save money for delinquent plans and reduce PBGC's penalty receipts. But PBGC assesses penalties not to generate income but to encourage compliance and sanction non-compliance. If PBGC can achieve the same level of timely payment while assessing lower penalties, higher penalties are inappropriate. And lower penalties may tend to encourage the continuation and adoption of defined benefit plans, a favorable outcome for plan participants.

PBGC estimates that this rule will reduce penalty assessments for late payment of premiums by $2 million per year.

This final rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations[6] and is consistent with certain requirements in title I of ERISA[7] and the Internal Revenue Code,[8] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[9] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[10]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. PBGC received no comments on this point.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on the fact that small plans generally pay small premiums and thus small penalties for late payment of premiums. The average late premium penalty paid by a small plan for the 2014 plan year was about $160. This proposed rule would cut penalty payments in half, and thus create an average annual net economic benefit for each small plan of about $80. This is not a significant impact.

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC amends 29 CFR part 4007 as follows:

PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

■ 2. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words "paragraphs (b) through (g)" and adding in their place the words "paragraphs (b) through (h)"; and by removing the words "and is subject to a floor of $25 (or, if less, the amount of the unpaid premium)";

■ b. Paragraph (a)(1) is amended by removing the words "a written notice" and adding in their place the words "the first written notice"; by removing the words "1 percent" and adding in their place the words "½ percent"; and by removing the words "50 percent" and adding in their place the words "25 percent".

■ c. Paragraph (a)(2) is amended by removing the words "5 percent" and adding in their place the words "2½ percent"; and by removing the words "100 percent" and adding in their place the words "50 percent".

■ d. Paragraph (h) is added.

The addition reads as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(h) *Demonstrated compliance.* PBGC will waive 80 percent of the premium payment penalty assessed under paragraph (a)(2) of this section if the criteria in paragraphs (h)(1) and (2) of this section are met.

(1) For each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined,—

(i) Any required premium filing for the plan has been made; and

(ii) PBGC has not required payment of a penalty for the plan under this section.

(2) For the plan year for which the penalty rate is being determined, the total amount of premium is paid no later than 30 days after PBGC issues the first written notice as described in paragraph (a)(1) of this section.

Issued in Washington, DC, by

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–22901 Filed 9–22–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0271]

RIN 1625–AA09

Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Florida East Coast Railway (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL. This rule implements requirements for the operator to ensure that adequate notice of bridge closure times are available to the waterway traffic. It also changes the schedule from requiring openings "on demand" to an operating regulation requiring the bridge to be open no fewer than 60 minutes in every 2 hour period. Changing the bridge operating schedule will allow the bridge owner to operate the Bridge remotely with assistance from the onsite bridge tender.

DATES: This rule is effective October 24, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0271 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

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[6] See *e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[7] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[8] See, *e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[9] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

[10] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Rod Elkins with the Coast Guard; telephone 305–415–6989, email *Rodney.J.Elkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

From May 18 through October 16, 2015, a test deviation assessing the viability of the schedule implemented in this rule was in effect for the New River Bridge (80 FR 28184). The comment period ended on August 17, 2015. There were eight comments received in response to the test deviation. The comments from the test deviation were addressed in the notice of proposed rulemaking (NPRM).

On November 3, 2015, we published a NPRM entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the **Federal Register** (80 FR 67677). We received 234 submissions on the proposed rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499.

The FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL is a single leaf bascule bridge. It has a vertical clearance of 4 feet at mean high water in the closed position. Presently, in accordance with 33 CFR 117.5, the FEC Railroad Bridge is required to open on signal for the passage of vessels. Traffic on the waterway includes both commercial and recreational vessels.

Prior to implementing a test deviation on May 18, 2015, the Bridge operated without a tender or monitor. An automated system closed the Bridge when a train approached and reopened the Bridge when a train cleared. The Coast Guard received multiple complaints from mariners because there was no means of obtaining notice of bridge closure times or potential closure duration. The new regulation balances the reasonable needs of waterway traffic on the New River with train traffic moving through condensed population areas in Ft. Lauderdale.

This regulation was developed to accommodate the unique needs of rail transportation in South Florida while balancing the reasonable needs of maritime transportation on the New River. Train schedules at the crossings cannot be precisely scheduled due to unpredictable delays caused by train car loading and vehicular traffic crossing the track. Also, train bridges must be in the down position well in advance of the train's arrival to ensure that it can safely cross the bridge or stop if there are problems with the Bridge.

IV. Discussion of Comments, Changes and the Final Rule

Two hundred thirty-four submissions were received resulting in a total of 319 comments concerning the proposed rule. The total number of comments exceeds the number of submissions because some submissions expressed more than one point in their comment. Of these comments, 39 were in favor of the proposed rule. Forty-nine of the comments expressed opposition to a future rail project, which is not the focus of this regulation, and were not relevant.

Sixty-six comments expressed opposition to the regulation of Bridges other than the Florida East Coast Railway (FEC) Railroad Bridge. This regulation only pertains to the FEC Railroad Bridge over the New River in Fort Lauderdale.

Eleven comments opposed the proposed modification and recommended the Bridge owner provide a train schedule with specified opening times. In respect to a schedule the on-site bridge tender will provide a 12-hour forecast schedule to waterway users upon request. However, scheduling bridge openings is not viable because trains typically experience loading and traffic delays that interfere with the operator's ability to precisely identify an exact time when the train will cross the waterway.

Eighteen comments stated the modification would create unsafe vessel congestion near the Bridge. This regulation allows mariners to communicate with a bridge tender and receive updates on the Bridge's status; thereby relieving congestion that exists with the current schedule.

Sixty-four comments opposed the Bridge being closed 50 percent of the time or 60 minutes at a time. These comments also recommended various minimum time limits for bridge openings. This regulation does not require closing the Bridge 50 percent of the time or for 60 minutes at one time. It sets a maximum time for the Bridge's closure within a two hour period. This regulation authorizes a total combined closure time for any given 120 minute period that will not exceed 60 minutes. Moreover, if a train is not crossing or approaching, the Bridge will remain open. Based on input from the bridge owner and input gathered at Coast Guard public meetings, the Coast Guard determined that it is not a viable option to require minimum time limits for the bridge to be open at one time because trains would have considerable difficulty coordinating passage across the bridge with this schedule. Therefore, this regulation does not adopt alternatives to set minimum time limits for Bridge openings. Vessels can transit at all times that trains are not crossing.

Thirteen comments expressed concern that the modification would hinder emergency vessels from responding. This regulation requires the Bridge to open immediately for emergency vessels to pass.

Twenty-six comments expressed safety concerns for vehicle traffic in the area and emergency vehicle response times being delayed. This regulation seeks to balance the needs of rail and maritime navigation by allowing the Bridge to close for the passage of trains. By doing so, it seeks to ensure passing trains are not delayed by the Bridge schedule, therefore, it should alleviate surrounding vehicular traffic.

There were 26 comments that addressed concern that the modification would decrease property values and hurt business in the area. The Coast Guard does not have evidence that this regulation will result in a decrease in property values or that it will adversely affect businesses in the area.

Five commenters requested bridge modifications that would replace and raise the vertical height of the bridge, and to require mooring stations for waiting vessels, which is outside of the scope of this rule because this rule only amends the opening schedule for the Bridge by creating protocols that will make it easier for vessel traffic to schedule transits during times the Bridge is open.

Two of the 234 commenters requested a public meeting. A public meeting was held on 12 November 2014 (USCG–2014–0937), and the proposed schedule modification was developed from the input received from the public meeting.

The Coast Guard also received complaints about the high noise levels of the horn blast prior to a bridge closure. The prescribed sound signal has typically been required on all unmanned automated rail road bridges. We are removing the requirement for the horn blast from the regulation since the bridge is no longer unmanned. Other than the removal of horn blasts, 33 CFR 117.313 is modified as was proposed in the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is made because vessels can still transit the waterway at times identified by the tender 12 hours in advance of the scheduled transit. Also, vessels can transit at all times that trains are not crossing or if they do not require a bridge opening to transit.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge when the Bridge is closed for train crossings. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation. Vessels transiting the New River at mile 2.5 may do so at times scheduled up to 12 hours prior to transit. Also, vessels can transit at all times that trains are not crossing.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.313, revise paragraph (c), add reserved paragraph (d), and add paragraph (e) to read as follows:

§ 117.313 New River.

* * * * *

(c) The following requirements apply to the Florida East Coast Railway Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL:

(1) The bridge shall be constantly tended.

(2) The bridge tender will utilize a VHF–FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305–889–5572.

(3) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.

(4) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(5) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(6) When a train approaches, the lights go to flashing red then the draw lowers and locks.

(7) After the train has cleared the bridge, the draw opens and the lights return to green.

(8) The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m. each day.

(9) The bridge shall remain open to maritime traffic when trains are not crossing.

(d) [Reserved]

(e) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

Dated: August 22, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–22915 Filed 9–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0181]

Drawbridge Operation Regulation; North Landing River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the S165 (North Landing Road) Bridge across the North Landing River, mile 20.2, at Chesapeake, VA. This modified deviation is necessary to perform emergency bridge repairs and provide for safe navigation. This modified deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 6 p.m. on September 30, 2016, through 4 p.m. on October 14, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0181] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 11, 2016, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 12824); on April 8, 2016, the Coast Guard published a modified temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 20529); and on June 29, 2016, the Coast Guard published a modified temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 42248). These documents were necessary to authorize a temporary deviation from the operating regulations to perform repairs to the south swing span of the bridge due to damage sustained as a result of a vessel allision with the bridge that occurred on March 1, 2016. The United States Army Corps of Engineers, Norfolk District Office, who owns and operates the S165 (North Landing Road) Bridge, has requested a modified temporary deviation from the current operating regulations to perform repairs to the south swing span of the bridge, following receipt of replacement parts scheduled to arrive in the first week of October 2016. The modified temporary deviation request is necessary to receive the replacement parts in the first week of October 2016 and allow for sufficient time to complete repairs to the bridge.

The current operating scheduled is set out in 33 CFR 117.1021. Under this modified temporary deviation, the north span of the bridge will open-to-navigation on the hour and half hour, upon request, from 6 a.m. to 7 p.m., and on demand from 7 p.m. to 6 a.m. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast, (2) 10:30 a.m. for vessels transiting northwest, and (3) at noon and 2 p.m. for two-way vessel traffic through the bridge, Monday through Friday, from Friday, September 30, 2016, through Monday, October 10, 2016. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast and (2) 10:30 a.m. for vessels transiting northwest, Saturday and Sunday, from Saturday, October 1, 2016, through Sunday, October 9, 2016. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, for additional on demand openings from October 4, 2016, through October 10, 2016, if 48 hours notice is given. The south span of the bridge will be closed-to-navigation during bridge repair from 9 a.m., October 11, 2016, through 4 p.m., October 14, 2016. The horizontal clearance of the bridge with the south span closed-to-navigation is 38 feet and the horizontal clearance of the bridge with the south span partially open-to-navigation is 70 feet. The modified temporary deviation is necessary to relieve vessel congestion and provide for safe navigation on the waterway. The bridge is a double swing draw bridge and has a vertical clearance in the closed position of 6 feet above mean high water.

The North Landing River is used by a variety of vessels including small U. S. government and public vessels, small commercial vessels, tug and barge, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels which are able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The north span of the bridge will be able to open for emergencies. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the modified temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 19, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–22916 Filed 9–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0451]

RIN 1625–AA00

Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal. This action is necessary to protect spectators, participants, and vessels from the hazards associated with the Tough Cup event on these navigable waters in Chicago, IL, on September 24, 2016. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 6:30 a.m. to 1 p.m. on September 24, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0451 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Lindsay Cook, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986–2155, email *Lindsay.N.Cook@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On December 27, 2015, the Coast Guard received an Application for Marine Event for the Tough Cup event that will be held from 6:30 a.m. to 1 p.m. on September 24, 2016, on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge. In response, on July 1, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL" (81 FR 43178). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended July 31, 2016, we received two comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. To provide an opportunity for comment, as opposed to not issuing an NPRM, we issued the NPRM knowing it would be impracticable not to make a final rule effective less than 30 days after it is published. Delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the ability to protect the public and vessels from the hazards associated with a race involving personal watercraft to take place on September 24, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Lake Michigan (COTP) has determined that the potential hazards associated with vessels transiting through a narrow and congested section of the river during the Tough Cup event will pose concerns for all vessels navigating in the area. The purpose of this rule is to ensure the safety of spectators, vessels participating in the event and all vessels operating in the vicinity of the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published July 1, 2016. One comment stated concerns with the notification to the public being sufficient for the proposed rule. The Coast Guard has provided notice required by the Administrative Procedures Act (5 U.S.C. 553) and will also provide notification by issuing a Broadcast Notice to Mariners via VHF–FM marine channel 16. To further address the concern of sufficient notification, the Coast Guard will include a notification in the Local Notice to Mariners publication. The second comment received was supportive of the event and related waterway restriction. There is one change in the regulatory text of this rule from the proposed rule in the NPRM to include the additional notification in the Local Notice to Mariners publication. This rule establishes a safety zone from 6:30 a.m. to 1 p.m. on September 24, 2016. The safety zone will cover all navigable waters on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge in Chicago, IL. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled Tough Cup event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a short duration on the one day this rule will be in effect to ensure safety of spectators and participants at this scheduled event. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, a notification in the Local Notice to Mariners publication, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting six and a half hours that will prohibit entry within a section of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal. It is categorically excluded from further review under paragraph 34g of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0451 to read as follows:

§ 165.T09–0451 Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL.

(a) *Location.* All waters of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge.

(b) *Effective and enforcement period.* This rule will be effective from 6:30 a.m. to 1:00 p.m. on September 24, 2016 and will be enforced from 6:30 a.m. to 1:00 p.m. on September 24, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: September 19, 2016.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2016–22919 Filed 9–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 36 and 42

RIN 2900–AP78

Federal Civil Penalties Adjustment Act Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalties Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula increasing the maximum statutory amounts for civil monetary penalties and requires federal agencies to give notice of the new maximum amounts by regulation. This final rule of the Department of Veterans Affairs (VA) adopts without change VA's interim final rule, which increased maximum civil monetary penalties from $10,000 to $21,563 for false loan guaranty certifications and from $5,500 to $10,781 for fraudulent claims or fraudulent statements in any VA program.

DATES: *Effective Date:* Effective September 23, 2016, the interim final rule published June 22, 2016 (81 FR 40523) is adopted as final.

FOR FURTHER INFORMATION CONTACT: Jeffrey Martin, Program Manager, Office of Regulation and Policy Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–4918.

SUPPLEMENTARY INFORMATION: On June 22, 2016, VA published in the **Federal Register** an interim final rule adjusting the amounts of civil monetary penalties that VA may assess against participants who make certain false certifications or who engage in fraudulent activity. See 81 FR 40523. The interim final rule increased maximum civil monetary penalties from $10,000 to $21,563 for false loan guaranty certifications and from $5,500 to $10,781 for fraudulent claims or fraudulent statements in any VA program.

VA published the interim final rule to implement the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Pub. L. 114–74), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. In calculating the adjusted amounts, VA relied on guidance from The Executive Office of the President Office of Management and Budget (OMB), published on February 24, 2016, advising the heads of federal agencies how to implement the 2015 Act. See *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

VA received one comment in response to the interim final rule. The comment was a photograph that was not relevant to the rulemaking. The photograph was not posted to *www.regulations.gov.* VA is adopting the interim final rule without change.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," which requires review by OMB, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that it is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Accordingly, no proposed rulemaking was required in connection with the adoption of this final rule. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 16, 2016, for publication.

List of Subjects in 38 CFR Parts 36 and 42

Condominiums, Housing, Individuals with disabilities, Loan programs-housing and community development, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

PART 36—LOAN GUARANTY

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

■ Accordingly, the interim rule amending 38 CFR parts 36 and 42 which was published at 81 FR 40523 on June 22, 2016, is adopted as a final rule without change.

Dated: September 16, 2016.

Michael Shores

Acting Director, Regulation Policy & Management Office of the Secretary Department of Veterans Affairs

[FR Doc. 2016–22732 Filed 9–22–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0226; FRL–9951–68]

Flupyradifurone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flupyradifurone in or on multiple commodities which are identified and discussed later in this document. Bayer CropScience LP requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 23, 2016. Objections and requests for hearings must be received on or before November 22, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0226, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0226 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 22, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0226, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 16, 2016 (81 FR 14030) (FRL–9942–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8404) by Bayer CropScience LP, 2 T.W. Alexander

Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide, flupyradifurone, in or on abiu at 0.6 parts per million (ppm); akee apple at 0.6 ppm; avocado at 0.6 ppm; bacury at 0.6 ppm; banana at 0.6 ppm; binjai at 0.6 ppm; caneberry, subgroup 13–07A at 5 ppm; canistel at 0.6 ppm; cilantro, fresh leaves at 30 ppm; cupuacú at 0.6 ppm; etambe at 0.6 ppm; jatobá at 0.6 ppm; kava, fresh leaves at 40 ppm; kava, roots at 0.9 ppm; kei apple at 0.6 ppm; langstat at 0.6 ppm; lanjut at 0.6 ppm; lucuma at 0.6 ppm; mabolo at 0.6 ppm; mango at 0.6 ppm; mangosteen at 0.6 ppm; paho at 0.6 ppm; papaya at 0.6 ppm; pawpaw, common at 0.6 ppm; pelipisan at 0.6 ppm; pequi at 0.6 ppm; pequia at 0.6 ppm; persimmon, american at 0.6 ppm; plantain at 0.6 ppm; pomegranate at 0.6 ppm; poshte at 0.6 ppm; quandong at 0.6 ppm; quinoa at 3 ppm; sapote at 0.6 ppm; sataw at 0.6 ppm; screw-pine at 0.6 ppm; star apple at 0.6 ppm; stone fruit, stone group 12–12 at 1.5 ppm; tamarind-of-the-Indies at 0.6 ppm; and wild loquat at 0.6 ppm. That document referenced a summary of the petition prepared by Bayer CropScience LP, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified some of the commodity definitions that were proposed. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flupyradifurone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flupyradifurone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The most sensitive effects seen in the flupyradifurone database were skeletal muscle atrophy/degeneration in dogs. With repeated dosing, reductions in body weight and food consumption were commonly seen in various studies and in all species of test animals (rats, mice, dogs, and rabbits). The liver and thyroid were shown to be the common findings of flupyradifurone toxicity. The database appears to suggest that dogs are more sensitive to the effects of flupyradifurone; however, with body weight adjustments (based on a ¾ scaling factor), the dog and rat are almost equally as sensitive in response to flupyradifurone toxicity. The skeletal muscle atrophy/degeneration seen in the 90-day and 1-year dog studies formed the basis for chronic dietary exposure toxicity endpoints.

The developmental toxicity study in rats demonstrated no evidence of susceptibility in developing animals. In the rabbit developmental toxicity study, there was an increase in the incidence of fetal death at 80 milligram/kilogram/day (mg/kg/day) (the highest dose tested), a dose that did not produce adverse effects in the maternal animals.

Therefore, a quantitative increase in susceptibility was demonstrated in the rabbit developmental toxicity study. In the 2-generation reproduction study in rats, decreased parental body weights ($\geq$10%) were seen at the lowest-observed-adverse-effect-level (LOAEL) of 137 mg/kg/day (parental no-observed-adverse-effect-level (NOAEL) = 37.8 mg/kg/day). In contrast, body weight decreases that were considered adverse were seen in F2 pups at 37.8 mg/kg/day (the parental NOAEL and the offspring LOAEL; offspring NOAEL = 7.7 mg/kg/day). These findings suggest quantitative susceptibility for developing young animals.

The acute neurotoxicity study (dosing by gavage) showed that at the time of peak-effect, flupyradifurone caused increases in the incidence of piloerection and dilated pupils at 50 mg/kg. At the next higher dose level (200 mg/kg) and above, it produced a large host of clinical signs, which were related to neurotoxicity. The clinical signs included dilated pupils, lower muscle tone, low arousal, tremors, myoclonic jerks, chewing, repetitive licking of lips, gait incoordination, flattened or hunched posture, and impaired righting reflex. In the 90-day neurotoxicity study, no neurotoxicity or other adverse effects were seen at dose levels as high as 174 mg/kg/day. The developmental neurotoxicity study at 102 mg/kg/day yielded an increased incidence of increased amplitude in startle response.

Flupyradifurone is classified as "not likely to be carcinogenic to humans." Carcinogenicity studies in rats and mice did not yield a compound-related increase in tumor incidence, and the genotoxicity battery did not show flupyradifurone to produce any genotoxicity. Flupyradifurone did not demonstrate any immunotoxic effects.

Specific information on the studies received and the nature of the adverse effects caused by flupyradifurone as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document titled "*Flupyradifurone (122304) Human Health Risk Assessment in Support of Proposed Uses on Kava, Cilantro, Stone Fruit, Group 12–12, Caneberry, Subgroup 13–07A, Quinoa, and Tropical Fruits; Amended Use Requests for Soil Applications to Leafy Vegetables, Group 4 and Brassica (Cole) Leafy Vegetables, Group 5; Use on Greenhouse Grown Tomato, Pepper, Cucumber, and Lettuce; Label Amendment to Add Commodities of Tree Nuts, Group 14–12 to label; and Label Amendment to Add Use Directions for Clover Grown for Forage, Fodder, Seed, Straw, and Hay*" on page 49 in docket ID number EPA–HQ–OPP–2013–0226.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for flupyradifurone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUPYRADIFURONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	NOAEL = 35 mg/kg/day. UF_A = 10 × UF_H = 10 × FQPA SF = 1 ×	Acute RfD = 0.35 mg/kg/day. aPAD = 0.35 mg/kg/day.	Acute neurotoxicity study—rat LOAEL = 50 mg/kg/day based on increased incidences of piloerection in both sexes and pupil dilation in females on Day 1. At the next higher dose level (200 mg/kg) or above, lower muscle tone, rapid respiration, low arousal, tremors, myoclonic jerks, chewing, repetitive licking of lips, gait incoordination, flattened or hunched posture, dilated pupils, impaired (uncoordinated or slow) righting reflex, impaired flexor and tail pinch responses and reduced rectal temperature. Automated measures of motor activity were also reduced in both sexes, compared to controls.
Chronic dietary (All populations)	NOAEL= 7.8 mg/kg/day. UF_A = 10 × UF_H = 10 × FQPA SF = 1 ×	Chronic RfD = 0.078 mg/kg/day. cPAD = 0.078 mg/kg/day.	Oral toxicity study—dog (1-year) LOAEL = 28 mg/kg/day based on minimal to slight, focal to multifocal areas of skeletal muscle degeneration in gastrocnemius and/or biceps femoris muscle.
Dermal short-term (1 to 30 days).	Dermal (or oral) study NOAEL = 12 mg/kg/day (dermal absorption rate = 7.42%. UF_A = 10 × UF_H = 10 × FQPA SF = 1 ×	LOC for MOE = 100	Oral toxicity study—dog (90-day) LOAEL = 33 mg/kg/day based skeletal muscle atrophy/degeneration. 2-Generation reproduction study—rat (co-critical study) NOAEL = 7.7 mg/kg/day. Offspring LOAEL = 38.7 mg/kg/day based on pup body weight decrease.
Inhalation short-term (1 to 30 days).	Oral study NOAEL = 12 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10 × UF_H = 10 × FQPA SF = 1 ×	LOC for MOE = 100	Oral toxicity study—dog (90-day) LOAEL = 33 mg/kg/day based on skeletal muscle atrophy/degeneration. 2-Generation reproduction study—rat (co-critical study) NOAEL = 7.7 mg/kg/day. Offspring LOAEL = 38.7 mg/kg/day based on pup body weight decrease.
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans—based on data showing no treatment-related increase in tumors incidence in rat and mouse carcinogenicity studies. No mutagenic concern was reported in the genotoxicity studies.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flupyradifurone, EPA considered exposure under the petitioned-for tolerances as well as all existing flupyradifurone tolerances in 40 CFR 180.679. EPA assessed dietary exposures from flupyradifurone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for flupyradifurone. In estimating acute dietary exposure, EPA used food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed 100% crop treated (PCT), tolerance level residues and Dietary Exposure Evaluation Model (DEEM) (ver. 7.81) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment

EPA used the food consumption data from the USDA's NHANES/WWEIA; 2003–2008. As to residue levels in food, EPA assumed 100 PCT, tolerance level residues and DEEM (ver. 7.81) default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flupyradifurone does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for flupyradifurone. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flupyradifurone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flupyradifurone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), Tier 1 Rice Model and Pesticide Root Zone Model Ground Water (PRZM GW) model, the estimated drinking water concentrations (EDWCs) of flupyradifurone for acute exposures are estimated to be 112 parts per billion (ppb) for surface water and 352 ppb for ground water, and for chronic exposures are estimated to be 112 ppb for surface water and 307 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 352 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 307 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Currently there are no registered uses for flupyradifurone that could result in residential exposures. However, there is a proposal to register uses that could result in residential exposures for application to ornamental plants (gardens, trees, shrubs, flowers). Therefore, the EPA considered the proposed residential uses and assessed residential exposure using the following assumptions: For residential handlers, short-term dermal and inhalation exposures were assessed for adults mixing, loading and applying liquids and ready to use formulations to gardens and trees using a variety of application equipment. For post-application exposure, short-term dermal exposures to adults and children (6 to <11 years old) to gardens, trees, and retail plants and indoor plants was evaluated. Only short-term residential exposures are expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found flupyradifurone to share a common mechanism of toxicity with any other substances, and flupyradifurone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flupyradifurone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence that flupyradifurone produces increased susceptibility in in the rat developmental study. There is quantitative increase in susceptibility in the rabbit developmental and rat reproduction studies. In the rabbit developmental study, no maternal effect was seen at the highest tested dose (80 mg/kg/day), while there was an increase in fetal death and decrease fetal body weight at the same dose level. In the rat reproduction study, maternal effect, decrease in body weight, was seen at 137 mg/kg/day, whereas decreases in pup body weight was seen at the next lower dose, 38.7 mg/kg/day or above. However, the PODs selected for risk assessment are protective of the quantitative susceptibility seen in the rabbit fetuses and rat pups.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for flupyradifurone is complete.

ii. Although there is evidence that flupyradifurone has neurotoxic effects, EPA has a complete set of neurotoxicity studies (acute, subchronic, and developmental). The effects of those studies are well-characterized and indicate neurotoxic effects that occur at levels above the chronic POD that was selected for risk assessment. The NOAEL for the acute neurotoxicity study is being used for the acute POD. Therefore, there is no need to retain the 10X FQPA SF to account for any uncertainty concerning these effects.

iii. There is no evidence that flupyradifurone results in increased susceptibility in *in utero* rats. There is quantitative increase in susceptibility in the rabbit developmental and rat reproduction studies. However, the PODs selected for risk assessment are protective of the quantitative susceptibility seen in the rabbit fetuses and rat pups.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flupyradifurone in drinking water. EPA used similarly conservative assumptions to assess the proposed residential post-application exposure of children. These assessments will not underestimate the exposure and risks posed by flupyradifurone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flupyradifurone will occupy 37% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flupyradifurone from food and water will utilize 86% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flupyradifurone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For flupyradifurone there are uses pending which the Agency has included in this action that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to flupyradifurone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and proposed residential exposures result in aggregate MOEs of 170 for adults and 190 for children (6 to <11 years old). Because EPA's level of concern for flupyradifurone is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, flupyradifurone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for flupyradifurone.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flupyradifurone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flupyradifurone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method (Method RV–001–P10–03) which uses high-performance liquid chromatography with tandem mass spectrometry (HPLC/MS/MS) to quantitate residues of flupyradifurone and difluoroacetic acid (DFA) in various crops is available for enforcement.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for flupyradifurone.

C. Response to Comments

EPA received two comments to the Notice of Filing. The first stated, in part, that EPA should deny this petition because it is a harmful and toxic chemical. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. EPA has assessed the effects of this chemical on human health and determined that aggregate exposure to it will be safe. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

The second comment was from Interregional Research Project Number 4 (IR–4) and was in support of the petition.

D. Revisions to Petitioned-For Tolerances

Bayer CropScience LP petitioned for tolerances on abiu, akee apple, avocado, bacury, banana, binjai, canistel, cupuacú, etambe, jatobá, kei apple, langstat, lanjut, lucuma, mabolo, mango, mangosteen, paho, papaya, common pawpaw, pelipisan, pequi, pequia, American persimmon, plantain, pomegranate, poshte, quandong, sapote, sataw, screw-pine, star apple, tamarind-of-the-Indies, and wild loquat. These commodities are all listed in the newly established crop subgroup 24B for tropical and subtropical, medium to large fruit, with a smooth, inedible peel. Subgroup 24B further breaks out the different types of avocado (to include Guatemalan, Mexican, and West Indian avocado), mango (to include horse and Saipan mango), and sapote (to include black, green, and white sapote). Although the petitioner did not specify any particular kind of avocado, mango, and sapote, the Agency considers the request for avocado, mango, and sapote to be general in nature and include all varieties of those commodities. As a result, the requested commodities align with the commodities contained in the new subgroup 24B.

In the **Federal Register** of May 3, 2016 (81 FR 26471) (FRL–9944–87) establishing that crop group, EPA indicated that, for existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. Therefore, consistent with this rule, EPA is establishing tolerances on crop subgroup 24B, the tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup, rather than all the commodities individually. EPA's dietary and aggregate risk assessments are based on data from the required representative commodities and account for flupyradifurone exposure from all of the subgroup 24B commodities.

V. Conclusion

Therefore, tolerances are established for residues of flupyradifurone, including its metabolites and degradates, in or on caneberry subgroup 13–07A at 5.0 ppm; cilantro, fresh leaves at 30 ppm; fruit, stone, group 12–12 at 1.5 ppm; kava, fresh leaves at 40 ppm; kava, roots at 0.90 ppm; quinoa, grain at 3.0 ppm; and the tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B at 0.60 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 14, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.679, add alphabetically the commodities "Caneberry subgroup 13–07A"; "Cilantro, fresh leaves"; "Fruit, stone, group 12–12"; "Kava, fresh leaves"; "Kava, roots"; "Quinoa, grain"; and "Tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B" to the table in paragraph (a) to read as follows:

§ 180.679 Flupyradifurone; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Caneberry subgroup 13–07A	5.0
* * *	* *
Cilantro, fresh leaves	30
* * *	* *
Fruit, stone, group 12–12	1.5
* * *	* *
Kava, fresh leaves	40
Kava, roots	0.90
* * *	* *
Quinoa, grain	3.0
* * *	* *
Tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B	0.60
* * *	* *

* * * * *

[FR Doc. 2016–22976 Filed 9–22–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[16X.LLWO310000.L13100000.PP0000]

RIN 1004–AE47

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the fees set forth in the Bureau of Land Management (BLM) mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2016.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW., Washington, DC 20240; Attention: RIN 1004–AE47.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Chief, Division of Fluid Minerals, 202–912–7143; Mitchell Leverette, Chief, Division of Solid Minerals, 202–912–7113; or Mark Purdy, Regulatory Affairs, 202–912–7635. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM's minerals program published a final cost recovery rule (70 FR 58854) establishing or revising fees and service charges imposed in connection with the processing of certain minerals program-related actions (2005 Cost Recovery Rule). In addition to establishing the fees and charges, the 2005 Cost Recovery Rule also established the method the BLM would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C (43 CFR parts 3000–3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those fees and service charges consistent with that direction. The fee adjustments in this rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this rule may be effective less than 30 days after publication. See 43 CFR 3000.10(c).

II. Discussion of Final Rule

The BLM's minerals program publishes a fee update rule each year, which becomes effective on October 1. As set forth in the 2005 Cost Recovery Rule, the fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar year to the 4th Quarter of the following calendar year. In this case, the fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2014 to the 4th Quarter of 2015 and reflects the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year's rule, also known as the "existing value." This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1, to establish the new fee.

Under this rule, 30 fees will remain the same and 18 fees will increase. Of the 18 fees that are being increased by this rule, 15 of the increases are equal to $5 each. The largest increase, $35, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $3,075 to $3,110. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $20, from $1,535 to $1,555. The "plus per acre nomination fee" for geothermal development will increase from $0.11 to $0.12.

The calculations that resulted in the new fees are included in the table below:

FIXED COST RECOVERY FEES FY17

Document/action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)					
Noncompetitive lease application	$410	$408.656	$4.5770	$413.2334	$415
Competitive lease application	160	158.591	1.7762	160.3668	160
Assignment and transfer of record title or operating rights	90	91.486	1.0246	92.5106	95
Overriding royalty transfer, payment out of production	10	12.196	0.1366	12.3326	10
Name change, corporate merger or transfer to heir/devisee	215	213.467	2.3908	215.8580	215
Lease consolidation	450	451.337	5.0550	456.3921	455
Lease renewal or exchange	410	408.656	4.5770	413.2334	415
Lease reinstatement, Class I	80	79.279	0.8879	80.1672	80
Leasing under right-of-way	410	408.656	4.5770	413.2334	415
Geophysical exploration permit application—Alaska [6]	25	....	....	....	25
Renewal of exploration permit—Alaska [7]	25	....	....	....	25
Geothermal (part 3200)					
Noncompetitive lease application	410	408.6565	4.5770	413.2334	415
Competitive lease application	160	158.5906	1.7762	160.3668	160
Assignment and transfer of record title or operating right	90	91.4859	1.0246	92.5106	95

FIXED COST RECOVERY FEES FY17—Continued

Document/action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Name change, corporate merger or transfer to heir/devisee	215	213.4672	2.3908	215.8580	215
Lease consolidation	450	451.3371	5.0550	456.3921	455
Lease reinstatement	80	79.2793	0.8879	80.1672	80
Nomination of lands	115	114.1784	1.2788	115.4572	115
Plus per acre nomination fee	0.11	0.11418	0.0013	0.1155	0.12
Site license application	60	60.9906	0.6831	61.6737	60
Assignment or transfer of site license	60	60.9906	0.6831	61.6737	60
Coal (parts 3400, 3470)					
License to mine application	10	12.1960	0.1366	12.3326	10
Exploration license application	335	335.4592	3.7571	339.2163	340
Lease or lease interest transfer	65	67.1047	0.7516	67.8562	70
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)					
Applications other than those listed below	35	36.5987	0.4099	37.0086	35
Prospecting permit amendment	65	67.1047	0.7516	67.8562	70
Extension of prospecting permit	110	109.7853	1.2296	111.0149	110
Lease modification or fringe acreage lease	30	30.5060	0.3417	30.8477	30
Lease renewal	525	524.5451	5.8749	530.4200	530
Assignment, sublease, or transfer of operating rights	30	30.5060	0.3417	30.8477	30
Transfer of overriding royalty	30	30.5060	0.3417	30.8477	30
Use permit	30	30.5060	0.3417	30.8477	30
Shasta and Trinity hardrock mineral lease	30	30.5060	0.3417	30.8477	30
Renewal of existing sand and gravel lease in Nevada	30	30.5060	0.3417	30.8477	30
Multiple Use; Mining (Group 3700)					
Notice of protest of placer mining operations	10	12.1960	0.1366	12.3326	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)					
Application to open lands to location	10	12.1960	0.1366	12.3326	10
Notice of Location	20	18.2886	0.2048	18.4935	20
Amendment of location	10	12.1960	0.1366	12.3326	10
Transfer of mining claim/site	10	12.1960	0.1366	12.3326	10
Recording an annual FLPMA filing	10	12.1960	0.1366	12.3326	10
Deferment of assessment work	110	109.7853	1.2296	111.0149	110
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	30.5060	0.3417	30.8477	30
Mineral Patent adjudication					
(more than ten claims)	3,075	3,074.0626	34.4295	3108.4921	3,110
(ten or fewer claims)	1,535	1,537.0153	17.2146	1,554.2298	1,555
Adverse claim	110	109.7853	1.2296	111.0149	110
Protest	65	67.1047	0.7516	67.8562	70
Oil Shale Management (parts 3900, 3910, 3930)					
Exploration License Application	320	321.7561	3.6037	325.3597	325
Assignment or sublease of record title or overriding royalty	65	65.4479	0.7330	66.1809	65

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis (March 25, 2016).

III. How Fees Are Adjusted

The figures in the Existing Fee column in the table above represent the base value of the existing fee (shown in the Existing Value column) rounded to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1. In calculating the annual adjustment to the fee, however, the BLM begins with the unrounded base fee, represented in the Existing Value column. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from rounding the new values to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1, adjustments based on the figures in the Existing Fee column would lead to significantly over- or under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest $5 for fees equal to or greater than $1, or the nearest penny for fees under $1, to establish the New Fee.

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[1] The Existing Fee was established by the 2015 (Fiscal Year 2016) cost recovery fee update rule published September 30, 2015 (80 FR 58625), effective October 1, 2015.

[2] The Existing Value is the figure from the New Value column in the previous year's rule.

[3] From 4th Quarter 2014 (109.067) to 4th Quarter 2015 (110.286), the IPD–GDP increased by 1.12 percent. The value in the IPD–GDP Increase column is 1.12 percent of the Existing Value.

[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.

[5] The New Fee for Fiscal Year 2016 is the New Value rounded to the nearest $5 for values equal to or greater than $1, or to the nearest penny for values under $1.

[6] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this $25 fee.

[7] The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this $25 fee, as well.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs. However, most of these fee increases are less than 2 percent, and none of the increases materially affects the budgetary impact of any of the affected fees or charges.

Finally, this rule will not raise novel legal or policy issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 Cost Recovery Rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Lead ore mining (NAICS code 212231): 750 or fewer employees
- Copper ore mining (NAICS code 212234): 1,500 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111)—1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112)—1,500 or fewer employees
- Crude Petroleum and Natural Gas Extraction (NAICS code 211111)—1,250 or fewer employees
- Natural Gas Liquid Extraction (NAICS code 211112)—750 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399)—500 or fewer employees

The SBA standards were adjusted as of February 26, 2016, per 13 CFR 121.104. The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule may affect a large number of small entities because 18 fees for activities on public lands will be increased. However, most of the fee increases will be less than 2 percent. The adjustments result in no increase in the fees for processing 30 actions relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims; that fee will increase by $35. Accordingly, the BLM has concluded that the economic effect of the rule's changes will not be significant, even for small entities. For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

The Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-hour burdens associated with the following control numbers:

Oil and Gas

(1) 1004–0034 which expires July 31, 2018;
(2) 1004–0137 which expires January 31, 2018;
(3) 1004–0162 which expires October 31, 2018;
(4) 1004–0185 which expires March 31, 2019;

Geothermal

(5) 1004–0132 which expires December 31, 2016;

Coal

(6) 1004–0073 which expires August 31, 2016;[8]

Mining Claims

(7) 1004–0025 which expires March 31, 2019;
(8) 1004–0114 which expires October 31, 2016; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires August 31, 2016.[8]

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian tribes. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Mark Purdy of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Amanda C. Leiter,

Acting Assistant Secretary, Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2017. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

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[8] A request for renewal is pending with the Office of Management and Budget.

FY 2017 Processing and Filing Fee Table

Document/action	FY 2017 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)	
Noncompetitive lease application	$415.
Competitive lease application	$160.
Assignment and transfer of record title or operating rights	$95.
Overriding royalty transfer, payment out of production	$10.
Name change, corporate merger or transfer to heir/devisee	$215.
Lease consolidation	$455.
Lease renewal or exchange	$415.
Lease reinstatement, Class I	$80.
Leasing under right-of-way	$415.
Geophysical exploration permit application—Alaska	$25.
Renewal of exploration permit—Alaska	$25.
Geothermal (part 3200)	
Noncompetitive lease application	$415.
Competitive lease application	$160.
Assignment and transfer of record title or operating rights	$95.
Name change, corporate merger or transfer to heir/devisee	$215.
Lease consolidation	$455.
Lease reinstatement	$80.
Nomination of lands	$115.
plus per acre nomination fee	$0.12.
Site license application	$60.
Assignment or transfer of site license	$60.
Coal (parts 3400, 3470)	
License to mine application	$10.
Exploration license application	$340.
Lease or lease interest transfer	$70.
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)	
Applications other than those listed below	$35.
Prospecting permit application amendment	$70.
Extension of prospecting permit	$110.
Lease modification or fringe acreage lease	$30.
Lease renewal	$530.
Assignment, sublease, or transfer of operating rights	$30.
Transfer of overriding royalty	$30.
Use permit	$30.
Shasta and Trinity hardrock mineral lease	$30.
Renewal of existing sand and gravel lease in Nevada	$30.
Public Law 359; Mining in Powersite Withdrawals: General (part 3730)	
Notice of protest of placer mining operations	$15.
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)	
Application to open lands to location	$10.
Notice of location*	$20.
Amendment of location	$10.
Transfer of mining claim/site	$10.
Recording an annual FLPMA filing	$10.
Deferment of assessment work	$110.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	$30.
Mineral patent adjudication	$3,110 (more than 10 claims). $1,555 (10 or fewer claims).
Adverse claim	$110.
Protest	$70.
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	$325.
Application for assignment or sublease of record title or overriding royalty	$65.

*To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *

[FR Doc. 2016–22841 Filed 9–22–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 210, 212, 213, and 252

[Docket DARS–2016–0023]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows—

1. Provides direction to contracting officers at DFARS 210.002 to follow the procedures at DFARS Procedures, Guidance, and Information (PGI) 210.002(e)(iii) regarding market research file documentation;

2. Add DFARS 212.102(a)(ii) to reflect that contracting officers should follow the procedures and guidance at PGI 212.102(a) regarding file documentation;

3. Revises DFARS 213.7001 to update cross references to DFARS PGI;

4. Provides an updated internet link at DFARS 252.219–7000 to the Procurement Technical Assistance Center locations; and

5. Provides an updated internet link at DFARS 252.245–7004(b) to the Plant Clearance Automated Reutilization Screening System.

List of Subjects in 48 CFR 210, 212, 213, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 210, 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 210, 212, 213, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 210—MARKET RESEARCH

■ 2. Amend section 210.002 by adding paragraph (e)(iii) to read as follows:

210.002 Procedures.

(e) * * *

(iii) Follow the procedures at PGI 210.002(e)(iii) regarding contract file documentation.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Add section 212.102(a)(ii) to read as follows:

212.102 Applicability.

(a) * * *

(ii) Follow the procedures at PGI 212.102(a).

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.7001 [Amended]

■ 4. Amend section 213.7001 by—

■ a. In paragraph (a)(1), removing "219.804–2(2)" and adding "PGI 219.804–2(2)" in its place;

■ b. In paragraph (a)(2), removing "Subpart 219.8" and adding "PGI 219.8" in its place, and removing "219.804–2(2)" and adding "PGI 219.804–2(2)" in its place; and

■ c. In paragraph (b), removing "Subpart 19.8" and adding "subpart 19.8" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7000 [Amended]

■ 5. Amend section 252.219–7000 by—

■ a. Removing the clause date "(MAY 2015)" and adding "(SEP 2016)" in its place; and

■ b. In paragraph (c), removing "*www.dla.mil/SmallBusiness/Pages/ptac.aspx*" and adding "*http://www.dla.mil/HQ/SmallBusiness/PTAC.aspx*" in its place.

252.245–7004 [Amended]

■ 6. Amend section 252.245–7004 by—

■ a. Removing the clause date "(MAR 2015)" and adding "(SEP 2016)" in its place; and

■ b. In paragraph (b) introductory text, removing "*http://www.dcma.mil/ITCSO/CBT/PCARSS/index.cfm*" and adding "*http://www.dcma.mil/DCMAIT/cbt/PCARSS/index.cfm*" in its place.

[FR Doc. 2016–22572 Filed 9–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 236

[Docket DARS–2016–0006]

RIN 0750–AI87

Defense Federal Acquisition Regulation Supplement: Prohibition on Use of Any Cost-Plus System of Contracting for Military Construction and Military Family Housing Projects (DFARS Case 2015–D040)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012 that amended title 10 of the United States Code by prohibiting any form of cost-plus contracting for military construction projects or military family housing projects.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, telephone 571–372–6088.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 17050 on March 25, 2016. This final rule implements section 2801 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Section 2801 amends 10 U.S.C. 2306 by prohibiting any form of cost-plus contracting for military construction projects or military family housing projects. Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes from the Proposed Rule

There are minor changes to the DFARS text from the proposed rule based on the public comments. A list of the specific cost-reimbursement contract types prohibited has been included at DFARS 216.301–3, Limitations. At DFARS 236.215 the terminology was expanded to state "contracts in connection with a military construction project or military family housing project" in lieu of "contracts for construction." Additionally, at DFARS 236.271, the reference to 236.271 to the prohibition on use of "cost-plus" contracts was revised to refer to "cost-reimbursement" contracts.

B. Analysis of Public Comments

1. Support for the Rule

Comment: One respondent expressed support for the proposed rule, indicating that a blanket prohibition on cost-plus contracting in military construction and family housing projects is in the best interest of all parties, including small businesses and taxpayers.

Response: Noted.

2. Opposition to the Rule

Comment: One respondent opposed a blanket prohibition of cost-plus contracts stating that the rule excludes advances and innovations in the marketplace by prohibiting the selection of this form of contracting for construction projects.

Response: DoD does not have discretion in this rule as the prohibition is statutory and required by 10 U.S.C. 2306(c).

3. Term "Cost-plus Contract"

Comment: One respondent expressed concern that the term "cost-plus contract," as used in the proposed rule is nonstandard within title 48 of the Code of Federal Regulation, and as such should be further defined.

Response: In the context of the proposed DFARS revisions, "cost-plus" was interpreted as meaning those "cost-reimbursement" contract types defined in Federal Acquisition Regulation 16.304, 16.305, and 16.306. Further delineation, however, is added to DFARS 216.301–3 to list the specific contract types prohibited: Cost-plus-fixed-fee, cost-plus-award-fee, and cost-plus-incentive-fee. Additionally, the reference in DFARS 236.271 to use of any cost-plus contract is revised to refer to the list of cost-reimbursement contracts at DFARS 216.301–3.

4. Cross Reference to Statute

Comment: One respondent proposed that DoD remove the cross reference to 10 U.S.C. 2306(c) as the prohibition should remain notwithstanding any future changes that might be made to 10 U.S.C. 2306(c).

Response: It is a DFARS drafting convention to indicate in the regulations if they are based on a statute. This is helpful when considering future amendments to, or deviations from, the regulations. If the statute changes, appropriate changes to the regulations may be required.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The purpose of this rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 2801 of the National Defense Authorization Act for Fiscal Year 2012, which amends 10 U.S.C. 2306, to prohibit any form of cost-plus contracting for military construction projects or military family housing projects.

No comments were received from the public regarding the initial regulatory flexibility analysis.

There is minimal impact anticipated on small entities as a result of the proposed rule. Based on data available in the Federal Procurement Data System, there were only 19 cost-reimbursement type construction contracts awarded in fiscal year 2015, two of which were awarded to small businesses. There is already a general prohibition at DFARS 216.306 on certain cost-plus-fixed-fee contracts funded by a military construction appropriations act. The proposed rule expands this prohibition to all cost-plus contract types in connection with a military construction project or a military family housing project.

There are no new projected reporting, recordkeeping, and other compliance requirements of the rule.

There are no known significant alternatives to the rule that would meet the requirements of the statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 216 and 236

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 236 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 236 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

■ 2. Add section 216.301–3 to read as follows:

216.301–3 Limitations.

For contracts in connection with a military construction project or a military family housing project, contracting officers shall not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C. 2306(c)). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

■ 3. Amend section 216.306 by adding introductory text to paragraph (c) to read as follows:

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.* For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301–3.

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 4. Add section 236.215 to read as follows:

236.215 Special procedures for cost-reimbursement contracts for construction.

For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301–3.

■ 5. Revise section 236.271 to read as follows:

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)). See also 216.301–3 regarding the prohibition on the use of certain cost-reimbursement contracts in connection with a military construction project or military family housing project.

[FR Doc. 2016–22569 Filed 9–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

[Docket DARS–2016–0010]

RIN 0750–AI91

Defense Federal Acquisition Regulation Supplement: Rights in Technical Data (DFARS Case 2016–D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that addresses rights in technical data relating to major weapon systems, expanding application of the presumption that a commercial item has been developed entirely at private expense.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 28812 on May 10, 2016, to implement section 813(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 813(a) modifies 10 U.S.C. 2321(f) to address rights in technical data relating to major weapon systems.

Until now, except for commercially available off-the-shelf (COTS) items, a contracting officer's challenge to asserted restrictions on technical data relating to a major system was sustained unless the contractor or subcontractor submitted information demonstrating that the item was developed exclusively at private expense.

Section 813(a) revised 10 U.S.C. 2321(f) in two primary ways: (1) The major systems rule was narrowed to apply only to major weapon systems; and (2) the exception to the major systems rule for commercially available off-the-shelf (COTS) items was expanded to include three additional exceptions. More specifically, the formerly COTS-only exception was expanded to include (i) COTS items with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; (ii) commercial subsystems or components of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with 10 U.S.C. 2379(a); and (iii) components of a subsystem, if the subsystem was acquired as a commercial item in accordance with 10 U.S.C. 2379(b).

There were no public comments submitted in response to the proposed rule. There are no significant changes from the proposed rule made in the final rule.

Although there were no comments received on the substance of the proposed rule, DoD did receive a request to suspend the rulemaking process on any case (including this case) relating to rights in technical data until such time as the final report of the Government-Industry Advisory Panel (the Panel), established in accordance with section 813(b) of the NDAA for FY 2016, has been submitted to Congress. After consultation with the Chair of the Panel, DoD determined to proceed with publication of the final rule on this case. This case implements section 813(a) of the NDAA for FY 2016, the same section that set up the Panel, with no indication that DoD should delay implementation. Furthermore, the law is very prescriptive and the proposed rule is a nearly verbatim implementation of the statutory language, so there could be no substantive change to this rule without a corresponding statutory change to 10 U.S.C. 2321. The statute was effective upon implementation, and is expected to be beneficial to industry, including small businesses.

II. Discussion and Analysis

In order to implement the statutory changes for validation of asserted restrictions on technical data, and apply the revised requirements and procedures to validation of asserted restrictions on computer software, this final rule amends—

- DFARS 227.7103–13, Government right to review, verify, challenge, and validate asserted restrictions;
- DFARS 227.7203–13, Government right to review, verify, challenge, and validate asserted restrictions;
- DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software; and
- DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This final rule does not add any new provisions or clauses or add new requirements to existing provision or clauses. Rather, when acquiring major weapon systems, it expands the circumstances relating to commerciality in which the contracting officer shall presume that development was exclusively at private expense.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule was initiated to implement section 813(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). The objective of this rule is to reduce the requirement to respond to Government challenges of restricted rights, by expanding the applicability of the presumption regarding development exclusively at private expense in accordance with section 813(a) of the NDAA for FY 2016.

There were no public comments in response to the initial regulatory flexibility analysis.

DoD cannot accurately determine the number of small entities that will be affected by this change in the regulations, because DoD does not have sufficient information about subcontract awards of subsystems and components of major weapon systems. However, DoD estimates an annual reduction of 50 prechallenge requests for information and 2 challenges of asserted technical data restrictions. DoD further estimates, based on data from the DoD FY 2014 Small Business Procurement Scorecard, that this reduction in challenges will affect about 17 small businesses (52 × 0.33).

The final rule reduces the requirement to respond to Government challenge of restricted rights. Under current regulations, the presumption regarding development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items. This rule expands applicability of the presumption regarding development exclusively at private expense with regard to a major weapon system, or a subsystem or component thereof, to cover—

- A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));
- A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and
- Commercially available off-the-shelf items with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements.

The classes of small entities that will be affected by this reduction are small businesses that provide any items in the above categories that are not challenged due to the new statute.

This rule reduces the burden on small entities to the maximum extent permitted by the statute.

VI. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0704–0369, entitled "Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses."

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 227 and 252 are amended as follows:

■ 1. The authority citation for parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Amend section 227.7103–13 by—

■ a. Revising the section heading;

■ b. In paragraph (c)(1), removing "commercial item, component, or process" and adding "commercial item" in its place and removing "the item, component or process" and adding "that item" in its place; and

■ c. Revising paragraphs (c)(2)(i) and (ii).

The revisions read as follows:

227.7103–13 Government right to review, verify, challenge, and validate asserted restrictions.

* * * * *

(c) * * *

(2) * * *

(i) *Commercial items.* Except as provided in paragraph (c)(2)(ii) of this section, contracting officers shall presume that a commercial item was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. When a challenge is warranted, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(ii) *Major weapon systems.* When the contracting officer challenges an asserted restriction regarding technical data for a major weapon system or a subsystem or component thereof on the basis that the technology was not developed exclusively at private expense—

(A) The presumption in paragraph (c)(2)(i) of this section applies to—

(*1*) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with subpart 234.70 (10 U.S.C. 2379(a));

(*2*) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with subpart 234.70 (10 U.S.C. 2379(b)); and

(*3*) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(B) In all other cases, the contracting officer shall sustain the challenge unless information provided by the contractor or subcontractor demonstrates that the item was developed exclusively at private expense.

* * * * *

227.7203–13 [Amended]

■ 3. Amend section 227.7203–13 by—

■ a. In the section heading, adding a comma after "challenge";

■ b. Removing paragraph (d); and

■ c. Redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.227–7019 by—

■ a. Removing the clause date "(SEP 2011)" and adding "(SEP 2016)" in its place;

■ b. Removing paragraph (f);

■ c. Redesignating paragraphs (g), (h), (i), and (j) as paragraphs (f), (g), (h), and (i), respectively;

■ d. In newly redesignated paragraph (f)(5)—

■ i. Removing "(g)(1)" and adding "(f)(1)" in its place;

■ ii. Removing "Officer will" and adding "Officer shall" in its place; and

■ iii. Removing "paragraph (f) of this clause and";

■ f. In newly redesignated paragraph (f)(6) introductory text, removing "the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other" and adding "any" in its place;

■ g. In newly redesignated paragraph (g)(1) introductory text, removing "(h)(3)" and adding "(g)(3)" in its place; and

■ h. In newly redesignated paragraph (g)(3), removing "(h)(1)" and adding "(g)(1)" in its place.

■ 5. Amend section 252.227–7037 by—

■ a. Removing the clause date "(JUN 2013)" and adding "(SEP 2016)" in its place; and

■ b. Revising paragraphs (b)(1) and (2).

The revisions read as follows:

252.227–7037 Validation of restrictive markings on technical data.

* * * * *

(b) * * *

(1) *Commercial items.* (i) Except as provided in paragraph (b)(2) of this clause, the Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.

(ii) The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Major weapon systems.* In the case of a challenge to a use or release restriction that is asserted with respect to data of the Contractor or a subcontractor for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense—

(i) The presumption in paragraph (b)(1) of this clause applies to—

(A) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));

(B) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and

(C) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(ii) In all other cases, the challenge to the use or release restriction will be sustained unless information provided by the Contractor or a subcontractor demonstrates that the item or process was developed exclusively at private expense.

* * * * *

[FR Doc. 2016–22570 Filed 9–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2016–0032]

RIN 0750–AJ07

Defense Federal Acquisition Regulation Supplement: New Designated Country—Moldova (DFARS Case 2016–D028)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add Moldova as a new designated country under the World Trade Organization Government Procurement Agreement.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6176.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 2016, the World Trade Organization (WTO) Committee on Government Procurement approved the accession of Moldova to the WTO Government Procurement Agreement (GPA). This rule adds Moldova to the list of WTO GPA countries wherever it appears in the DFARS, as part of the definition of "designated country".

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates the list of designated countries in the DFARS by adding the newly designated country of Moldova. The definition of "designated country" is updated in each of the following clauses; however, this revision does not impact the clause prescriptions for use, or applicability at or below the simplified acquisition threshold, or applicability to commercial items. The clauses are: DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled "Publication of Proposed Regulations." Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it is just updating the lists of designated countries in order to reflect that Moldova is now a member of the WTO GPA. These requirements affect only the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS 252.225–7018, Photovoltaic Devices—Certificate, and 252.225–7020, Trade Agreements Certificate, currently approved under OMB Control Number 0704–0229, entitled "Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses," in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because the rule only affects the response of an offeror that is offering a product of Moldova in an acquisition that exceeds $191,000. In 252.225–7018, the offeror of a product from Moldova must now check a box at (d)(6)(i) of the provision. However, the offeror no longer needs to list a product from Moldova under "other end products" at 252.225–7020(c)(2), because Moldova is now a designated country.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7017 [Amended]

■ 2. Amend section 252.225–7017 by—

■ a. Removing the clause date of "(AUG 2016)" and adding "(SEP 2016)" in its place; and

■ b. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova".

252.225–7021 [Amended]

■ 3. Amend section 252.225–7021 by—

■ a. In the basic clause—

■ i. Removing the clause date of "(AUG 2016)" and adding "(SEP 2016)" in its place;

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova";

■ b. In the Alternate II clause—

■ i. Removing the clause date of "(AUG 2016)" and adding "(SEP 2016)" in its place; and

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova".

252.225–7045 [Amended]

■ 4. Amend section 252.225–7045 by—

■ a. In the basic clause—

■ i. Removing the clause date of "(JUN 2016)" and adding "(SEP 2016)" in its place;

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova";

■ b. In the Alternate I clause—

■ i. Removing the clause date of "(JUN 2016)" and adding "(SEP 2016)" in its place;

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova";

■ c. In the Alternate II clause—

■ i. Removing the clause date of "(JUN 2016)" and adding "(SEP 2016)" in its place;

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova"; and

■ d. In the Alternate III clause—

■ i. Removing the clause date of "(JUN 2016)" and adding "(SEP 2016)" in its place;

■ ii. In paragraph (a), in the definition of "designated country" in paragraph (i), adding, in alphabetical order, the country of "Moldova".

[FR Doc. 2016–22571 Filed 9–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2016–0234]

RIN 2126–AB94

Parts and Accessories Necessary for Safe Operation; Windshield-Mounted Technologies

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the voluntary mounting of certain devices on the interior of the windshields of commercial motor vehicles (CMVs), including placement within the area that is swept by the windshield wipers. Section 5301 of the Fixing America's Surface Transportation (FAST) Act directs the Agency to amend the FMCSRs to allow devices to be mounted on the windshield that utilize "vehicle safety technology," as defined in the Act. In addition, the section 5301 states that all windshield mounted devices/technologies with a limited 2-year exemption in effect on the date of enactment, shall be considered to meet the equivalent-or-greater safety standard required for the initial exemption. Promulgation of this final rule is a nondiscretionary, ministerial action that does not require prior notice and public comment under the Administrative Procedure Act (APA).

DATES: This final rule is effective October 24, 2016.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than October 24, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202–366–0676; *luke.loy@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone 202–366–0676.

SUPPLEMENTARY INFORMATION: This Final Rule is organized as follows:

I. Executive Summary
II. Abbreviations
III. Legal Basis
IV. Background
V. FAST Act—Windshield Technology
VI. Discussion of Final Rule
VII. International Impacts
VIII. Section-by-Section
IX. Regulatory Analyses
  A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)
  B. Regulatory Flexibility Act (Small Entities)
  C. Assistance for Small Entities
  D. Unfunded Mandates Reform Act of 1995
  E. Paperwork Reduction Act (Collection of Information)
  F. E.O. 13132 (Federalism)
  G. E.O. 12988 (Civil Justice Reform)
  H. E.O. 13045 (Protection of Children)
  I. E.O. 12630 (Taking of Private Property)
  J. Privacy
  K. E.O. 12372 (Intergovernmental Review)
  L. E.O. 13211 (Energy Supply, Distribution, or Use)
  M. E.O. 13175 (Indian Tribal Governments)
  N. National Technology Transfer and Advancement Act (Technical Standards)
  O. Environment (NEPA, CAA, E.O.12898 Environmental Justice)

I. Executive Summary

Section 5301 of the FAST Act, enacted on December 4, 2015, but made effective on October 1, 2015, pursuant to section 1003, directs the Secretary to revise 49 Code of Federal Regulations (CFR) 393.60(e) relating to the prohibition on obstructions to the driver's field of view, to provide an exception for the voluntary mounting on a windshield of "vehicle safety technology" likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved without the exception. Section 5301(c) provides that any windshield-mounted technology for which FMCSA had granted a limited exemption under 49 CFR part 381 that was in effect on the date of enactment of the FAST Act (October 1, 2015) shall be considered as meeting the equivalent-or-better level of safety. For this reason, FMCSA amends 49 CFR 393.60(e) to allow the use of all the devices for which limited exemptions had previously been granted, with restrictions on placement that are consistent with the restrictions that were included in the limited 2-year exemptions.

Specifically, the Agency replaces current § 393.60(e)(1) with (1) § 393.60(e)(1)(i), which requires antennas and similar devices to be mounted not more than 152 mm (6 inches) below the upper edge of the windshield, and outside the driver's sight lines to the road and highway signs and signals; and (2) § 393.60(e)(1)(ii), which provides an exception to paragraph (e)(1)(i) to allow devices that utilize certain vehicle safety technologies (including, but not limited to video event recorders, lane departure warning systems, collision mitigation or warning systems, transponders, and sensors that are part of a hands-free driver aid equipment package) to be mounted on the interior of the windshield and within the area swept by the windshield wipers. The Agency adds a definition of "vehicle safety technology" in § 393.5, specifically as it relates to § 393.60(e). The Agency believes the potential economic impact of these changes is negligible. The amendments do not impose new or more stringent requirements, but simply codify the temporary exemptions granted pursuant to 49 CFR part 381 that allow the use of the above-mentioned devices/technologies in locations that would have previously been a violation of § 393.60(e)(1). More importantly, the amendments do not mandate the use of any devices/technologies, but simply permit the voluntary use of the devices/technologies while mounted in a location that maximizes their effectiveness without impairing operational safety.

II. Abbreviations

Full name	Abbreviation or acronym
Clean Air Act	CAA
Categorical Exclusion	CE
Code of Federal Regulations	CFR
Commercial Motor Vehicles	CMVs
Executive Order	EO
Federal Highway Administration.	FHWA
Federal Motor Carrier Safety Administration.	FMCSA
Federal Motor Carrier Safety Regulations.	FMCSRs
Fixing America's Surface Transportation Act.	FAST Act
Motor Carrier Act, 1935	1935 Act
Motor Carrier Safety Act of 1984.	1984 Act
National Environmental Policy Act.	NEPA
Notice of Proposed Rulemaking.	NPRM
Office of Management and Budget.	OMB
United States Code	U.S.C.

III. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act, 1935 [1935 Act], the Motor Carrier Safety Act of 1984 [1984 Act], and the FAST Act of 2015.

The 1935 Act, as amended, provides that "[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation." [49 U.S.C. 31502(b)].

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely . . .; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title." [49 U.S.C. 31136(a)].

Section 5301 of the FAST Act directs FMCSA to exempt voluntary mounting of a vehicle safety technology on a windshield if that technology is likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved without the exemption [Pub. L. 114–94, 129 Stat. 1312, 1543, Dec. 4, 2015]. Section 5301(c) also specifies that any regulatory exemption for windshield-mounted technologies in effect on the date of enactment of the FAST Act "shall be considered likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved absent an exemption . . ." It must be noted, however, that section 1003 of the FAST Act makes this provision effective on October 1, 2015, not on the date the act was signed.

The requirements of 49 U.S.C. 31136 (a)(1), (2) and (4) are applicable to this rulemaking action. The rulemaking amends 49 CFR part 393 to allow certain safety equipment to be mounted within the area of the windshield swept by the windshield wipers. The Agency has concluded that this modification will not impair operational safety. Because the amendments in this final rule are primarily technical changes that make permanent certain variances already allowed by regulatory exemptions, FMCSA believes that they will be welcomed by motor carriers and drivers alike and that coercion to violate these variances, which is prohibited by § 31136(a)(5), will not be an issue. FMCSA must consider the "costs and benefits" of any proposal before promulgating regulations [49 U.S.C. 31136(c)(2)(A), 31502(d)].

Adoption of this rule is a nondiscretionary ministerial action. Because prior notice and opportunity for comment could not affect the substance of this rule, FMCSA finds good cause under 49 U.S.C. 553(b) to make the rule immediately final. For the same reason, the Agency finds good cause to make the rule effective upon publication, as authorized by 49 U.S.C. 553(d).

IV. Background

The fundamental purpose of 49 CFR part 393, "Parts and Accessories Necessary for Safe Operation," is to ensure that an employer does not operate a CMV or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of that part. However, nothing contained in part 393 should be construed to prohibit the use of additional equipment and accessories, as long as it is not inconsistent with or prohibited by the FMCSRs, provided that such equipment and accessories do not decrease the safety of operation of the CMV on which they are used (§ 393.3).

Prior to 1998, § 393.60(c) ("Use of vision-reducing matter") prohibited the operation of any CMV "with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed at the bottom of the windshield, provided that no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 4½ inches from the bottom of such windshield." On March 6, 1995, the Federal Highway Administration (FHWA) granted a petition from the Commonwealth of Kentucky and Heavy Vehicle Electronic License Plate, Inc. for a waiver of the requirements of § 393.60(c) to allow mounting of an automatic vehicle identification transponder at the upper border of the windshield of CMVs. After reviewing automotive engineering recommended practices, the Federal Motor Vehicle Safety Standards, research regarding driver's field of view, and CMV cab designs related to placement of interior mirrors and sun visors, FHWA concluded that mounting a transponder at the approximate center of the top of the windshield would be extremely unlikely to create a situation inconsistent with the safe operation of a CMV, and was unlikely to have any effect on a driver's ability to observe nearby objects, such as pedestrians.

On April 14, 1997, FHWA published a notice of proposed rulemaking (NPRM) in which the Agency proposed general amendments to part 393 of the FMCSRs, including numerous revisions to § 393.60 regarding glazing materials, windshields and windows (62 FR 18170). Among other things, FHWA proposed revising § 393.60(c) concerning the restrictions on the use of vision-reducing matter on windshields to allow the installation of antennas, transponders, and similar devices in the upper margin of windshields. Specifically, the NPRM proposed to replace § 393.60(c) with a new § 393.60(e), "Prohibition on obstructions to the driver's field of view," that would (1) require antennas, transponders, and similar devices to be located not more than 6 inches below the upper edge of the windshield, outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs or signals, and (2) retain the general requirement that inspection decals and stickers required under Federal or State laws must be mounted not more than 4½ inches from the bottom of the windshield, outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs or signals. The proposed revisions were intended to eliminate the need for motor carriers to petition FHWA for waivers to allow the use of windshield-mounted transponders and similar devices, such as the March 1995 waiver. The NPRM stated that "The proposed amendment would codify the March 6, 1995, waiver and help to promote the use of advanced technologies to improve the efficiency and safety of operation of commercial motor vehicles."

On January 9, 1998, FHWA published a final rule adopting the amendments as proposed in the April 1997 NPRM (63 FR 1383). In adopting the amendments, FHWA stated that "revising § 393.60 to allow the use of windshield-mounted transponders and similar devices will help to promote increased efficiency and safety of motor carrier operations." FHWA reviewed accident reports concerning the transponder-equipped CMVs operating under the terms of the 1995 waiver, and determined that there had been no crashes that could be attributed to the mounting of such devices in the uppermost area of the center of the windshields of the CMVs. Based on this, FHWA concluded that "the real-world experience of the motor carriers operating approximately 10,000 transponder-equipped CMVs indicates that allowing other CMVs to be similarly equipped is consistent with the public interest and the safe operation of CMVs." The amendments adopted in the January 1998 final rule, establishing § 393.60(e), have remained unchanged over the past 18 years.

In the past several years, FMCSA has granted numerous temporary exemptions from 49 CFR 393.60(e)(1) for a variety of devices and safety technologies that require a clear forward-facing visual field to function most effectively. In conditions of rain or other inclement weather, these devices must be located partially or entirely in the area of the windshield swept by wipers. Many of these devices/safety technologies, such as video event recorders, lane departure warning system sensors, and forward collision warning and mitigation systems, did not exist when the requirements of § 393.60(e) were first established in 1998.

V. FAST Act—Windshield Technology

Section 5301(a) of the FAST Act directs FMCSA to amend § 393.60(e) of the FMCSRs to "exempt from that section the voluntary mounting on a windshield of vehicle safety technology likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved absent the exemption." "Vehicle safety technology" is defined in Section 5301(b) to include (1) a fleet-related incident management system, (2) performance or behavior management system, (3) speed management system, (4) lane departure warning system, (5) forward collision warning or mitigation system, (6) active cruise control system, and (7) any other technology that the Secretary considers applicable.

Section 5301(c) also states that "any windshield mounted technology with a short term exemption under part 381 of title 49, Code of Federal Regulations, on the date of enactment of this Act, shall be considered likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved absent an exemption." The following is a list of temporary exemptions from § 393.60(e) that were in effect on October 1, 2015, the effective date of the FAST Act pursuant to section 1003:

- On March 13, 2015 (80 FR 13460), FMCSA granted a 2-year exemption from § 393.60(e)(1) to Volvo/Prevost, LLC motorcoaches for a lane departure system mounted not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The lane departure warning system alerts drivers who unintentionally drift out of their lane of travel, thus promoting improved safety performance.
- On March 18, 2015 (80 FR 14222), FMCSA granted Mobileye, Inc., a 2-year exemption from § 393.60(e)(1) for CMVs utilizing a camera-based collision avoidance system mounted not more than 4 inches below the upper edge, or above the lower edge, of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The collision avoidance system warns drivers of potential hazards by detecting other vehicles, pedestrians and cyclists on the road, and lane markings and traffic signs.
- On March 18, 2015 (80 FR 14231), FMCSA granted Lytx Inc. (formerly DriveCam, Inc.), a renewal of a 2-year exemption from § 393.60(e)(1) for CMV utilizing video event recorders mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. Use of the

video event recorders increases safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness, (2) enhanced monitoring of passenger behavior for CMVs in passenger service, and (3) enhanced collision review and analysis. This exemption was initially granted on April 15, 2009, and was renewed for successive 2-year periods in 2011, 2013, and 2015.

- On April 2, 2015 (80 FR 17818), FMCSA granted Greyhound Lines, Inc. a renewal of a 2-year exemption from § 393.60(e)(1) for its buses utilizing video event recorders mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. Use of the video event recorders increases safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness, (2) enhanced monitoring of passenger behavior for CMVs in passenger service, and (3) enhanced collision review and analysis. This exemption was initially granted on March 19, 2009, and was renewed for successive 2-year periods in 2011, 2013, and 2015.
- On May 20, 2015 (80 FR 29151), FMCSA granted the Virginia Tech Transportation Institute a 2-year exemption from § 393.60(e) to allow certain motor carriers operating up to 150 CMVs that are part of a National Highway Traffic Safety Administration (NHTSA) research program on the reliability of collision avoidance systems to mount camera-based data acquisition systems within and/or below 3 inches of the bottom of the driver side windshield wiper sweep, and out of the driver's sight lines to the road and highway signs and signals. The data acquisition system provides an external view of the road and an internal view of the driver, scanning the facial features of the driver for detection of impaired driving.
- On June 22, 2015 (80 FR 35697), FMCSA granted Help, Inc. a 2-year exemption from § 393.60(e)(1) for motor carriers using Help, Inc. transponders mounted 2 inches right of the center of the windshield, and 2–3 inches above the dashboard. If however, because of the design and mounting of the windshield wipers on a particular CMV, use of the mounting location identified above did not result in the transponder being located within the swept area of the wipers, where it could function optimally, the transponder could be positioned: (1) To the right of the center of the windshield; and (2) as low as possible in the swept area of the wipers. The transponders transmit and receive data that is used to help determine a vehicle's compliance with safety, weight, and credential requirements while traveling at highway speeds, saving motor carriers time, fuel, and money, reducing congestion around inspection facilities, and improving inspection efficiency and effectiveness by enabling officials to focus their resources on vehicles with safety and size and weight infractions.
- On November 18, 2013, FMCSA renewed (and published on November 25, 2013, 78 FR 70396) for 2 years an exemption from § 393.60(e)(1) for motor carriers using lane departure warning systems and collision mitigation systems mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The lane departure warning system alerts drivers who unintentionally drift out of their lane of travel, thus promoting improved safety performance. This exemption was initially granted in 2011, renewed (through November 25, 2015) in 2013, and again (through November 17, 2017) on December 7, 2015 (80 FR 76061). The 2011 exemption was in effect on the date of enactment of the FAST Act.

Less than one month after enactment of the FAST Act, FMCSA granted one additional temporary exemption from § 393.60(e) that is currently in effect:

- On December 21, 2015 (80 FR 794112), FMCSA granted Volvo Trucks of North America a 2-year exemption from § 393.60(e)(1) for motor carriers operating Volvo CMVs to use a rain and ambient light detection sensor mounted in the lower part of the passenger side of the windshield within the bottom 7 inches of the area swept by the windshield wipers, outside the driver's sight lines to all mirrors, highway signs, signals, and view of the road ahead. The sensors are part of a hands-free driver aid equipment package intended to improve driver safety.

Video event recorders (Lytx, Greyhound), lane departure warning systems (Bendix, Volvo/Prevost), and collision avoidance systems (Mobileye) were specifically identified in the definition of "vehicle safety technology" in section 5301(b) of the FAST Act. FMCSA considers both the VTTI data acquisition system, which scans a driver's facial features for the detection of impaired driving, and the Volvo rain and ambient light sensor, which is part of a hands-free driver aid equipment package, to be "performance or behavior management systems" under the definition in the Act. While transponders do not fall into any of the specific categories included in the definition of "vehicle safety technology" in the Act, these devices have been permitted to be mounted in the windshield of CMVs since the granting of the 1995 waiver, and will be included in the amendments made via this rule as the HELP, Inc., temporary exemption was in effect at the time the Act was published.

VI. Discussion of Final Rule

As directed by the Act, this final rule amends § 393.60(e) to allow certain vehicle safety technologies to be mounted on the interior of the windshield of a CMV, within a defined portion of the swept area of the windshield. FMCSA adds a definition of "vehicle safety technology" in § 393.5 of the FMCSRs, to include all of the technologies that had been granted temporary exemptions from § 393.60(e) that were in effect at the time the FAST Act was enacted. Consistent with the terms and conditions outlined in the various temporary exemptions currently in effect, the amended rules require devices that must be mounted within the area swept by the windshield wipers to be located (1) not more than 100 mm (4 inches) below the upper edge, and (2) not more than 175 mm (7 inches) above the lower edge of the area swept. Additionally, and consistent with the existing regulation and the terms and conditions of the temporary exemptions, the devices must be located outside the driver's sight lines to the road and highway signs and signals.

Similar to the 1995 waiver and the 1998 amendments to § 393.60, this rule updates the FMCSRs in response to the development and proliferation of devices that utilize new and innovative vehicle safety technologies that did not exist at the time the previous requirements were adopted. These devices/technologies have been proven to improve safety and vehicle operations. As the first temporary exemption from 393.60(e)(1) was granted in March 2009, FMCSA has over 7 years of real-world experience of motor carriers operating CMVs using devices mounted on the interior of the windshield and marginally within the area swept by the windshield wipers. During that time, FMCSA is unaware of any crashes that have been attributed to the location of such devices.

Section 5301(b) of the Act directs the Agency to permit specific vehicle safety technologies (*i.e.*, fleet-related incident management system, performance or behavior management system, speed management system, lane departure warning system, forward collision warning or mitigation system, and active cruise control system) to be mounted lower in the windshield than currently allowed, and "any other technology that the Secretary considers applicable." At this time, the Agency is unaware of any other existing technologies that should be included in the amendments made via this rule.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

VIII. Section-by-Section Analysis

Under this final rule, the requirements of 49 CFR 393.60 are revised to allow for the utilization of specific vehicle safety technologies that would be mounted on the interior of the windshield of a CMV, and within the area swept by the windshield wipers. FMCSA also adds a definition for "vehicle safety technology" in 49 CFR 393.5

IX. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by Executive Order 13563)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011); is not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980, 44 FR 11034, February 26, 1979); and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Therefore, the Office of Management and Budget has not reviewed it under that Order. The Agency estimates that the economic benefits and costs of the voluntary use of vehicle safety technologies will be less than $100 million. Carriers will not incur costs associated with adopting any technologies identified in this final rule because all such technologies are purely optional. Manufacturers of technologies currently exempted will experience a minor cost savings through the elimination of the biennial burden to renew existing exemptions. Manufacturers not currently named in exemptions that wish to develop and market such technologies will have new business opportunities. Carriers that choose to purchase and install currently exempt technologies may be more confident in doing so since there will be no question as to whether an expiring exemption will be renewed.

Furthermore, the net impact of this rule, although small, should be beneficial to the motoring public. When FMCSA previously granted each exemption involved here, it found that doing so would likely achieve a level of safety equivalent to, or greater than, the level of safety achieved without the exemption. Based on the technical information available, there is no indication that the rain and ambient light detection sensors, lane departure warning system sensors, collision mitigation or avoidance system sensors, video event recorders or transponders would obstruct drivers' views of the roadway, highway signs and surrounding traffic. Generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver; and the location within the top four inches of the area swept by the windshield wipers and out of the driver's sightline or within the bottom 7 inches of the area swept by the windshield wipers and out of the driver's sightline will be reasonable and enforceable at roadside. Moreover, no exemption has been rescinded due to: (1) Motor carriers and/or commercial motor vehicles failing to comply with the terms and conditions of an exemption; (2) A lower level of safety than that prior to the granting of an exemption; or (3) Inconsistency between continuation of an exemption with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b). For the reasons stated above, the Agency estimates that the net impact of this rule will be positive.

The economic impact of this final rule is expected to be small because it merely makes permanent certain temporary exemptions to the windshield-obstruction rule, and none of its provisions involve new or more stringent requirements than those already allowed by current exemptions. This final rule does not approach the $100 million annual threshold of economic significance with respect to costs; in fact, it adds no new costs. With respect to benefits, this final rule will marginally increase the usage of vehicle safety technologies as defined in Section 5301(b) of the FAST Act, thereby producing safety benefits that the Agency lacks data to quantify. However, as the vehicle safety technologies permanently exempted in this rule are already commercially available and used by many carriers, the Agency expects their usage to increase only slightly faster than without this rule. The Agency therefore expects the benefits of this final rule will not rise to the $100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest.

The FMCSA has determined that it has good cause under 5 U.S.C. 553(b) to adopt this final rule without prior notice and opportunity for comment. The Agency finds that notice and comment are "unnecessary" because section 5301(a) of the FAST Act required FMCSA to revise § 393.60(e) within 180 days of the date of enactment, essentially to codify as permanent regulations those exemptions to the windshield-obstruction rule that have been issued in recent years. Section 5301(c) specified that any exemption from § 393.60(e) in effect on the date of enactment of the FAST Act must be considered to meet the statutory test for an exemption in 49 U.S.C. 31315(b)(1), *i.e.*, "likely [to] achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Because section 5301 gives FMCSA no discretion in amending the regulations to allow vehicle safety technology, the Agency has determined that notice and comment are unnecessary.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA determined that it has good cause to adopt the rule without notice and comment.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that results in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 2014 after adjusting for inflation) or more in any 1 year.

E. Paperwork Reduction Act (Collection of Information)

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). FMCSA has determined that no new information collection requirements are associated with this rule under OMB control number 2126–0003, "Inspection, Repair, and Maintenance."

F. Executive Order 13132 (Federalism)

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this final rule under Executive Order 13132 and determined that it does not have Federalism implications.

G. Executive Order 12988 (Civil Justice Reform)

The final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this final rule will not create an environmental risk to health or safety that may disproportionately affect children.

I. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This final rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

K. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

L. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Executive Order 13175 (Indian Tribal Governments)

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt its own technical standards, there is no need to submit a separate statement to OMB on this matter.

O. Environment (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, Appendix 2, paragraph 6.bb. The Categorical Exclusion (CE) in paragraph 6.bb. addresses regulations concerning vehicle operation safety standards (*e.g.*, regulations requiring: Certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (*e.g.* fire extinguishers and flares). A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov.*

FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this final rule in accordance with the Executive Order, and has determined that it has none, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

For the reasons stated above, FMCSA amends 49 CFR chapter III, subchapter B, as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); sec. 5301 and 5524 of Pub. L. 114–94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

■ 2. Amend § 393.5 by adding a definition for "Vehicle safety technology" in alphabetical order to read as follows:

§ 393.5 Definitions.

* * * * *

Vehicle safety technology. Vehicle safety technology includes a fleet-related incident management system, performance or behavior management system, speed management system, lane departure warning system, forward collision warning or mitigation system, active cruise control system, and transponder.

* * * * *

■ 3. Amend § 393.60 by revising paragraph (e)(1) to read as follows:

§ 393.60 Glazing in specified openings.

* * * * *

(e) *Prohibition on obstructions to the driver's field of view—(1) Devices mounted on the interior of the windshield.* (i) Antennas, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

(ii) Paragraph (e)(1)(i) of this section does not apply to vehicle safety technologies, as defined in § 393.5, that are mounted on the interior of a windshield. Devices with vehicle safety technologies must be mounted:

(A) Not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers;

(B) Not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers; and

(C) Outside the driver's sight lines to the road and highway signs and signals.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87 on: September 12, 2016.

T.F. Scott Darling, III,
Administrator.

[FR Doc. 2016–22923 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 393 and 395

[Docket No. FMCSA–2016–0050]

Hours of Service of Drivers; Parts and Accessories: ArcelorMittal Indiana Harbor, LLC, Application for Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemptions.

SUMMARY: FMCSA announces its decision to grant ArcelorMittal Indiana Harbor, LLC (ArcelorMittal) exemptions from the hours of service (HOS) and parts and accessories rules. One exemption will allow ArcelorMittal's employee-drivers with commercial driver's licenses (CDLs) who transport steel coils between their production and shipping locations on public roads to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty. The other exemption will allow ArcelorMittal to use coil carriers that do not meet the "heavy hauler trailer" definition, height of rear side marker lights restrictions, tire loading restrictions, and the coil securement requirements.

DATES: These exemptions are effective from September 23, 2016 through September 23, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942–6477. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, "FMCSA–2016–0050" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the "Fixing America's Surface Transportation Act," (FAST Act) [Pub. L. 114–94, 129 Stat. 1312, 1537, Dec. 4, 2015], amended 49 U.S.C. 31315(b) by adding a new paragraph (2) which permits exemptions for no longer than 5 years from their dates of inception, instead of the previous 2 years. This statutory provision was codified in 49 CFR 381.300, effective July 22, 2016 (81 FR 47714).

III. Request for Exemptions

ArcelorMittal (USDOT 1098829) operates a steel plant in East Chicago, Indiana, its principal place of business. Several public roadways run through the plant area. Steel coils produced in one portion of the plant must be transported over two short segments of public highway to another section of the plant for further processing or shipment to customers. Both points where the vehicles cross are controlled intersections, having either traffic lights or a combination of traffic lights and signs. The first public road the CMVs cross is Riley Road. The crossing is controlled by a 4-way traffic signal. The distance traveled is 80 feet. The average number of crossings at this intersection is 24 per day. The second crossing is at Dickey Road and 129th Street. The distance traveled here is .2 miles. The trucks cross 129th Street 24 times per day.

The trailers are specially designed with cradles to hold steel coils in place. The trailers have a bed height and width of 68 and 114 inches, respectively, and a maximum height of 14 feet.

Unloaded, these tractor-trailer combinations have a gross weight of 77,000 pounds. When fully loaded their gross weight is 263,171 pounds. The trailers have off-road tires to distribute this weight and avoid damaging roads, both inside and outside the plant. The tractors' maximum speed is 30–35 mph, but only 15 mph when moving a fully loaded trailer. These vehicles have many of the same features of a typical tractor and trailer, but do not meet all of the parts and accessories requirements in 49 CFR part 393.

All employee-drivers are required to hold CDLs and adhere to the regulations that apply to CMV drivers. When employee-drivers move these vehicles, they are fully marked as an "oversize load" and have flags on the front of the tractor. Driving these vehicles amounts to 10 percent of the employee-drivers' total work day. ArcelorMittal contends that these employee-drivers do not work more than 16 hours per day and advises that a 16-hour work day is the exception, not the rule.

According to ArcelorMittal, the current hours-of-service (HOS) regulations create problems as employee-drivers typically work an 8-hour shift plus overtime while employees in the production and shipping areas work 12-hour shifts. Employee-drivers must go home under the current arrangement, leaving a 4-hour gap between production and the driver's schedule, creating a possible shortage of coils for shipping or processing. ArcelorMittal asserts that the limited number of employees who drive the CMVs make it difficult to schedule moves. ArcelorMittal anticipates that only 3 of the 24 crossings at each noted intersection would occur after the 14th hour on-duty.

ArcelorMittal requested a complete exemption from 49 CFR part 395 for its "internal logistics" drivers to enable them to follow the same schedule as the employees in the production and shipping areas. The applicant could then minimize the chances of possible shortages of coils for shipping or processing. ArcelorMittal advised that it would ensure that all employee-drivers would not work more than 16 hours per shift, would receive 8 hours off duty between shifts, and would not be allowed to drive more than 10 percent of their total work day.

As previously noted, the vehicles used to transport steel coils have many of the same features as a typical tractor and trailer, but do not meet all of the requirements for parts and accessories in 49 CFR part 393. ArcelorMittal therefore requested exemptions for its coil-carrier trailers from the heavy hauler trailer definition in § 393.5; the required height of rear side marker lights in § 393.11 Table 1—Footnote 4; the tire loading restrictions in § 393.75(f); and the coil securement requirements in § 393.120.

According to ArcelorMittal, its equipment was designed for in-facility use and very limited road use. Public roadways are crossed only when necessary, and oversize-overweight permits are obtained from local authorities when required. The applicant advises that it has never had an issue with its equipment or drivers at the crossings mentioned above. The coils are well-secured in the trailers due to the design of the cradles. The time needed to secure the coils in compliance with part 393 would be longer than the transit time from one part of the plant to another.

IV. Method To Ensure an Equivalent or Greater Level of Safety

ArcelorMittal asserted that it has taken additional precautions to use public roadways for the shortest possible distances and only at controlled intersections. The applicant ensures that all lights are properly working on both the tractor and trailer. It also flags and marks the vehicles as "oversize" loads. Trailers have conspicuity tape down the entire side to make them more visible to other traffic. The applicant believes that its additional precautions ensure a level of safety that is equivalent to or exceeds the level of safety achieved by following the regulations.

ArcelorMittal acknowledged in its application that these "internal logistics" drivers would remain subject to all of the other applicable Federal regulations. This includes qualification of drivers, controlled substance and alcohol testing and inspection, and maintenance and repair of vehicles.

Included in ArcelorMittal's application are illustrations of the plant's location, public roads crossed, and pictures of the tractors and trailers used to transport the steel coils. A copy of ArcelorMittal's application for the exemptions is available for review in the docket for this notice.

V. Public Comments

On March 22, 2016, FMCSA published notice of this application and requested public comment (81 FR 15217). Four comments were submitted.

Mr. Keith Case wrote, "There are other options to handle this situation that do not include having a special exemption for one company. The company can hire additional drivers/workers to do this." Ms. Ingrid Harris commented, "I do not think that it's ok to give any company waivers to have drivers work longer hours. At the end of the day the driver still has to drive home and is tired. This will just cause more issues." Mr. Scott Olson stated, "I do not support any exemptions for anybody for any reason. If we make a rule, everybody needs to abide by it. If we don't like the rule, get rid of it."

The Advocates for Highway and Auto Safety stated that "ArcelorMittal's request for an exemption from the HOS regulations should be denied as granting such an exemption would result in a substantial reduction in the level of safety currently provided by the regulations. In addition, there is practical and common sense alternative readily available to the company other than the exemption. Finally, while Advocates does not oppose ArcelorMittal's request for an exemption for its vehicles from certain sections of 49 CFR part 393, FMCSA must be explicit that such an exemption is strictly limited in its scope to those vehicles and roadways described in the application."

VI. FMCSA Response and Decision

Prior to publishing the **Federal Register** notice announcing the receipt of ArcelorMittal's exemptions request, FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any "imminent hazard" or other out-of-service orders. The Agency conducted a comprehensive investigation of the safety performance history of the motor carrier during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

The FMCSA has evaluated ArcelorMittal's application for exemptions and the public comments. The Agency believes that ArcelorMittal's overall safety performance, as well as a number of other factors discussed below, will enable it to achieve a level of safety that is equivalent to, or greater than the level of safety achieved without the exemptions (49 CFR 381.305(a)).

These exemptions are being granted under extremely narrow conditions. One exemption is restricted to ArcelorMittal's employee-drivers to enable them to work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary. This is somewhat comparable to current HOS regulations that allow certain "short-haul" drivers a 16-hour driving "window" once a week (49 CFR 395.1(o)) and other non-CDL short-haul drivers two 16-hour duty periods per week (49 CFR 395.1(e)(2)), provided specified conditions are met. However, current regulations require a minimum of 10 hours off duty between duty periods.

Section 381.305(a) specifies that motor carriers ". . . may apply for an exemption if one or more Federal Motor Carrier Safety Regulations prevents you from implementing more efficient or effective operations that would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption."

The other exemption is restricted to ArcelorMittal's coil carriers as described in its application. The exemption enables ArcelorMittal's CMVs that do not meet the parts and accessories requirements in part 393 to use two short segments of public highway to move coils from one part of the plant to another for shipment to its customers. The CMVs operated by ArcelorMittal's drivers will be exposed to other traffic for very brief periods. The CMVs cross Riley Road, where they travel 80 feet. The length of the crossing at Dickey Road and 129th Street is .2 mile. The CMVs cross both points 24 times per day.

Terms of the Exemptions

Period of the Exemption

The exemptions from the requirements of 49 CFR part 395 and certain sections in 49 CFR part 393 (§§ 393.5; 393.11 Table 1—Footnote 4; 393.75(f); and 393.120) are granted for the period from September 23, 2016through September 23, 2021, for drivers employed by ArcelorMittal and certain CMVs used by ArcelorMittal to transport coils.

Extent of the Exemptions

The exemption from the requirements of 49 CFR part 395 is restricted to ArcelorMittal's internal logistics drivers. Drivers utilizing the exemption may work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

The exemption from certain sections in 49 CFR part 393 (§§ 393.5; 393.11 Table 1—Footnote 4; 393.75(f); and 393.120) is restricted to ArcelorMittal's CMVs that transport coils. The CMVs must only cross on Riley Road, where they travel 80 feet and Dickey Road and 129th Street where they travel .2 miles to move coils from one part of the plant to another for shipment to its customers. All drivers must have CDLs and drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations. ArcelorMittal must maintain any oversize-overweight permits required by local authorities.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period these exemptions are in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with these exemptions with respect to a firm or person operating under these exemptions.

Notification to FMCSA

ArcelorMittal must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of these exemptions. The notification must be by email to *MCPSD@DOT.GOV*, and include the following information:

a. Exemption Identifier: "ArcelorMittal"
b. Name and USDOT number of the motor carrier,
c. Date of the accident,
d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
e. Driver's name and driver's license number,
f. Vehicle number and State license number,
g. Number of individuals suffering physical injury,
h. Number of fatalities,
i. The police-reported cause of the accident,
j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemptions will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemptions. The FMCSA will immediately revoke the exemptions for failure to comply with its terms and conditions.

Issued on: September 15, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–22963 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 81, No. 185
Friday, September 23, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9073; Directorate Identifier 2015–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. We are proposing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9073; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9073; Directorate Identifier 2015–NM–062–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a final rule titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 ("SFAR 88") at 14 CFR part 21. Subsequently, SFAR 88 was amended by: Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change "21–82" to "21–83").

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Model 707/720 FQIS Design

The design of the in-tank FQIS components and wiring has the potential for a latent FQIS electrical fault condition inside the fuel tank combined with an electrical hot short condition connecting a high power source to the FQIS wiring to cause an ignition source in a fuel tank.

Under the policy contained in FAA Policy Memo PS–ANM100–2003–112–15, SFAR 88—Mandatory Action Decision Criteria, dated February 25, 2003 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf*), the FAA determined that this ignition source risk combined with the fleet average flammability for the center wing tank on Model 707 airplanes and Model 720 and 720B series airplanes created an unsafe condition for the center fuel tank. Applying that same policy, the FAA determined that due to a lower fleet average flammability, that same unsafe condition does not exist in the main and reserve (wing) tanks of these airplanes.

Related Rulemaking

On March 21, 2016, we issued AD 2016–07–07, Amendment 39–18452 (81 FR 19472, April 5, 2016), for certain Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. AD 2016–07–07 requires similar actions to those proposed in this NPRM. AD 2016–07–07 addressed the numerous public comments that were submitted on the proposal.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. It is likely that operators or modifiers would develop transient suppression devices to be installed in the FQIS circuitry at the fuel tank entry point rather than physically separating FQIS wiring throughout the airplane. If this occurs the costs would be significantly lower than the estimate below.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry. This estimate includes 2 cargo/tanker airplanes and 1 non-air-carrier passenger airplane, and 1 experimental airplane. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS: REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	600 work-hours × $85 per hour = $51,000	$150,000	$201,000	$804,000

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9073; Directorate Identifier 2015–NM–062–AD.

(a) Comments Due Date

We must receive comments by November 7, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 707 100 long body, 200, 100B long body, 100B short body, 300, 300B, 300C, and 400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category; excluding airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the requirements of 14 CFR 25.981(b), as amended on September 19, 2008, or 14 CFR 26.33(c)(1), as amended on September 19, 2008.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

Within 60 months after the effective date of this AD, modify the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov.*

Issued in Renton, Washington, on August 30, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21396 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9072; Directorate Identifier 2015–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 727 airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions. As an alternative to the modification, this proposed AD would allow deactivating the body-mounted auxiliary fuel tanks. We are proposing this AD to prevent ignition sources inside the body-mounted auxiliary fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9072; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9072; Directorate Identifier 2015–NM–110–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a final rule titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 ("SFAR 88") at 14 CFR part 21. Subsequently, SFAR 88 was amended by: Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at

68 FR 37735, June 25, 2003, to change "21–82" to "21–83").

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, combination of failures, and unacceptable (failure) experience. For all three failure criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Model 727 FQIS Design

The design of the in-tank FQIS components and wiring has the potential for a latent FQIS electrical fault condition inside the fuel tank combined with an electrical hot short condition connecting a high power source to the FQIS wiring to cause an ignition source in a fuel tank.

Under the policy contained in FAA Policy Memo PS–ANM100–2003–112–15, SFAR 88—Mandatory Action Decision Criteria, dated February 25, 2003 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf*), the FAA determined that this ignition source risk combined with the fleet average flammability for the optional auxiliary fuel tanks on those Model 727 airplanes created an unsafe condition for those tanks. Applying that same policy, the FAA determined that due to a lower fleet average flammability, that same unsafe condition does not exist in the main tanks of Model 727 airplanes.

Related Rulemaking

On March 21, 2016, we issued AD 2016–07–07, Amendment 39–18452 (81 FR 19472, April 5, 2016), for certain Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes. AD 2016–07–07 requires similar actions to those proposed in this NPRM. AD 2016–07–07 addressed the numerous public comments that were submitted on the proposal.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require modifying the fuel quantity indication system (FQIS) to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions. As an alternative to the modification, this proposed AD would allow deactivating the body-mounted auxiliary fuel tanks.

Explanation of Compliance Time

The compliance time for Model 727 airplanes is shorter than other FQIS AD actions because it is expected that the operators of the relatively small number of affected airplanes will choose to deactivate the body-mounted auxiliary tanks, either permanently or during an interim period prior to reactivating the tanks with approved corrective actions.

Costs of Compliance

We cannot estimate the number of airplanes of U.S. registry that would be affected by this proposed AD. Boeing originally built about 272 airplanes of the affected design, but cannot provide information on whether any are still in service. Boeing expects that most of the affected airplanes are out of service or have already had their auxiliary fuel tanks removed.

For any affected airplane, we estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS: REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	300 work-hours × $85 per hour = $25,500	$100,000	$125,500

ESTIMATED COSTS: ALTERNATIVE ACTIONS

Action	Labor cost	Parts cost	Cost per product
Tank deactivation	10 work-hours × $85 per hour = $850	$0	$850

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2015–9072; Directorate Identifier 2015–NM–110–AD.

(a) Comments Due Date

We must receive comments by November 7, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 727, 727–100, 727C, 727–100C, 727–200, and 727–200F series airplanes; certificated in any category; equipped with Boeing body-mounted auxiliary fuel tanks.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent ignition sources inside the body-mounted auxiliary fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

Within 12 months after the effective date of this AD, do the actions specified in either paragraph (g)(1) or (g)(2) of this AD, using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(1) Modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions.

(2) Deactivate the body-mounted auxiliary fuel tanks.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *Jon.Regimbal@faa.gov*.

Issued in Renton, Washington, on August 30, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21397 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9160; Directorate Identifier 2016–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; B–N Group Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T–4R, BN–2T, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 (all models on Type Certificate Data Sheets A17EU and A29EU) airplanes that would supersde AD 2016–06–01. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the inner shell of certain pitot/static pressure heads. We are issuing this proposed AD to change the model applicability due to errors found in AD 2016–06–01.

DATES: We must receive comments on this proposed AD by November 7, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9160; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–3047; email: *raymond.johnston@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include "Docket No. FAA–2016–9160; Directorate Identifier 2016–CE–022–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On March 7, 2016, we issued AD 2016–06–01, Amendment 39–18432 (81 FR 13717; March 15, 2016). That AD required actions intended to address an unsafe condition on B–N Group Ltd. Model B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 (all models on TCDS A17EU and A29EU) airplanes. AD 2016–06–01 was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> In 2005, occurrences were reported of finding cracks in the inner shell of certain pitot/static pressure heads, Part Number (P/N) DU130–24.
>
> This condition, if not detected and corrected, could lead to incorrect readings on the pressure instrumentation, *e.g.* altimeters, vertical speed indicators (rate-of-climb) and airspeed indicators, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, B–N Group issued Service Bulletin (SB) 310 to provide inspection and test instructions. Consequently, CAA UK issued AD G–2005–0034 (EASA approval 2005–6447) to require repetitive inspections and leak tests and, depending on findings, accomplishment of applicable corrective action(s).
>
> Subsequently, B–N Group published SB 310 issue 2, prompting EASA to issue AD 2006–0143 making reference to SB 310 at issue 2, while the publication of BNA SB 310 issue 3 prompted EASA AD 2006–0143R1, introducing BNA modification (mod) NB–M–1728 (new pitot/static pressure head not affected by the AD requirements) as optional terminating action for the repetitive inspections and leak tests.
>
> Since that AD was issued, operators have reported a number of premature failures of the affected P/N DU130–24 pitot-static probes.
>
> Prompted by these reports, BNA issued SB 310 issue 4 to reduce the interval for the inspections and leak tests.

Since we issued AD 2016–06–01, errors were discovered in the model applicability after issuance. This proposed AD adds Models BN–2T and BN–2T–4R, removes nonexistent Model BN2B, and removes duplicate listings of BN2A and BN2A MK.III.

Related Service Information Under 1 CFR Part 51

B–N Group Ltd. has issued Britten-Norman Service Bulletin Number SB 310, Issue 4, dated September 25, 2015. The service information describes procedures for inspections, and if necessary, replacement of the pitot/static pressure head. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 93 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $7,905, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $10,000, for a cost of $10,170 per product. We have no way of determining the number of products that may need these actions.

The cost impact of this AD is the same as that presented in AD 2016–06–01.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–18432 (81 FR 13717; March 15, 2016), and adding the following new AD:

B–N Group Ltd.: Docket No. FAA–2016–9160; Directorate Identifier 2016–CE–022–AD.

(a) Comments Due Date

We must receive comments by November 7, 2016.

(b) Affected ADs

This AD replaces AD 2016–06–01, Amendment 39–18432 (81 FR 13717; March 15, 2016).

(c) Applicability

This AD applies to B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T–4R, BN–2T, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 (all models on Type Certificate Data Sheets A17EU and A29EU) airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 34: Navigation.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the inner shell of certain pitot/static pressure heads. We are issuing this proposed AD to change the model applicability due to errors found in AD 2016–06–01.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (5) of this AD:

(1) *For all airplanes that are equipped with pitot/static pressure head part number (P/N) DU130–24, except Models BN–2T and BN–2T–4R:* Within 50 hours time-in-service (TIS) after April 19, 2016 (the effective date retained from AD 2016–06–01) and repetitively thereafter at intervals not to exceed 50 hours TIS, inspect the pitot/static pressure head for cracks and/or separation and perform a leak test following the procedures in the action section of Britten-Norman Service Bulletin SB 310, Issue 4, dated September 25, 2015.

(2) *For Models BN–2T and BN–2T–4R that are equipped with pitot/static pressure head part number (P/N) DU130–24:* Within 50 hours TIS after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours TIS, inspect the pitot/static pressure head for cracks and/or separation and perform a leak test following the procedures in the action section of Britten-Norman Service Bulletin SB 310, Issue 4, dated September 25, 2015.

(3) *For all airplanes equipped with pitot/static pressure head part number (P/N) DU130–24:* If, during an inspection or test required in paragraph (f)(1) or (2) of this AD discrepancies are found, before further flight, replace the pitot/static pressure head with an airworthy part.

(4) *For all airplanes equipped with pitot/static pressure head part number (P/N) DU130–24:* Corrections performed on airplanes as required in paragraph (f)(3) of this AD do not constitute terminating action for the repetitive actions required in paragraph (f)(1) or (2) of this AD.

(5) *For all airplanes not equipped with a pitot/static pressure head P/N DU130–24 on the effective date of this AD:* After April 19, 2016 (the effective date retained from AD 2016–06–01), do not install a pitot/static pressure head P/N DU130–24.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–4090; email:. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0184, dated September 1, 2015; for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9160. For service information related to this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call(816) 329–4148.

Issued in Kansas City, Missouri, on September 16, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–22831 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8833; Airspace Docket No. 16–ACE–8]

Proposed Amendment of Class E Airspace for the Following Iowa Towns; Algona, IA; Ankeny, IA; Atlantic, IA; Belle Plane, IA; Creston, IA; Estherville, IA; Grinnell, IA; Guthrie Center, IA; and Oelwein, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface area at Ankeny Regional Airport, Ankeny, IA; and Class

E airspace extending upward from 700 feet above the surface at Algona Municipal Airport, Algona, IA; Ankeny Regional Airport; Atlantic Municipal Airport, Atlantic, IA; Belle Plaine Municipal Airport, Belle Plaine, IA; Creston Municipal Airport, Creston, IA; Estherville Municipal Airport, Estherville, IA; Grinnell Regional Airport, Grinnell, IA; Guthrie County Regional Airport, Guthrie Center, IA; and Oelwein Municipal Airport, Oelwein, IA. Decommissioning of non-directional radio beacons (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. Additionally, the geographic coordinates for Algona Municipal Airport, Atlantic Municipal Airport, and Grinnell Regional Airport would be adjusted to coincide with the FAA's aeronautical database. The name of Belle Plaine, IA, would also be adjusted to correct a misspelling in the legal description.

DATES: Comments must be received on or before November 7, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2016–8833; Airspace Docket No. 16–ACE–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E surface area at Ankeny Regional Airport, Ankeny, IA; and Class E airspace extending upward from 700 feet above the surface at Algona Municipal Airport, Algona, IA; Ankeny Regional Airport; Atlantic Municipal Airport, Atlantic, IA; Belle Plaine Municipal Airport, Belle Plaine, IA; Creston Municipal Airport, Creston, IA; Estherville Municipal Airport, Estherville, IA; Grinnell Regional Airport, Grinnell, IA; Guthrie County Regional Airport, Guthrie Center, IA; and Oelwein Municipal Airport, Oelwein, IA.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–8833/Airspace Docket No. 16–ACE–8." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying:

Class E surface area airspace within a 4.2-mile radius (increased from the 4-mile radius) of Ankeny Regional Airport, Ankeny, IA;

Class E airspace extending upward from 700 feet above the surface:

By removing the 10-mile extension northwest of Algona Municipal Airport, Algona, IA, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.7-mile radius (reduced from the previous 7.1-mile radius) of Ankeny Regional Airport, Ankeny, IA, and removing the extensions 9.3 miles northeast and 11.1 miles north of the airport;

Within a 7.2-mile radius (increased from the 6.8-mile radius) of Atlantic Municipal Airport, Atlantic, IA, with an extension to the northeast from the 7.2-mile radius to 9.2 miles, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.5-mile radius (reduced from the previous 7.5-mile radius) of Belle Plaine Municipal Airport, Belle Plaine, IA, and correcting city designation from Belle Plane to Belle Plaine;

By removing the 11-mile extension south of Creston Municipal Airport, Creston, IA;

By removing the 7.4-mile extensions south and northwest of Estherville Municipal Airport, Estherville, IA;

Within a 6.5-mile radius (reduced from the previous 7.6-mile radius) of Grinnell Regional Airport, Grinnell, IA, and updating the geographical coordinates of the airport to coincide with the FAA's aeronautical database;

By adding an extension to the north from the 6.4-mile radius to 9.8 miles of Guthrie County Regional Airport, Guthrie Center, IA;

And within a 6.4-mile radius (reduced from the previous 7.3-mile radius) of Oelwein Municipal Airport, Oelwein, IA.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at the above airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ankeny, IA [Amended]

Ankeny Regional Airport, IA
(Lat. 41°41′29″ N., long. 93°33′59″ W.)

Within a 4.2-mile radius of Ankeny Regional Airport, excluding that portion within the Des Moines Class C airspace area.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Algona, IA [Amended]

Algona Municipal Airport, IA
(Lat. 43°04′41″ N., long. 94°16′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Algona Municipal Airport.

* * * * *

ACE IA E5 Ankeny, IA [Amended]

Ankeny Regional Airport, IA
(Lat. 41°41′29″ N., long. 93°33′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Ankeny Regional Airport, excluding that portion within the Des Moines Class C airspace area.

ACE IA E5 Atlantic, IA [Amended]

Atlantic Municipal Airport, IA
(Lat. 41°24′14″ N., long. 95°02′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Atlantic Municipal Airport and within 1.8 miles each side of the 022° bearing from the airport extending from the 7.2-mile radius to 9.2 miles northeast of the airport.

* * * * *

ACE IA E5 Belle Plaine, IA [Amended]

Belle Plaine Municipal Airport, IA
(Lat. 41°52′44″ N., long. 92°17′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Belle Plaine Municipal Airport, excluding that portion which overlies the Cedar Rapids, IA, Class E airspace area.

* * * * *

ACE IA E5 Creston, IA [Amended]

Creston Municipal Airport, IA
(Lat. 41°01′17″ N., long. 94°21′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Creston Municipal Airport.

* * * * *

ACE IA E5 Estherville, IA [Amended]

Estherville Municipal Airport, LA
(Lat. 43°24′27″ N., long. 94°44′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Estherville Municipal Airport.

* * * * *

ACE IA E5 Grinnell, IA [Amended]

Grinnell Regional Airport, IA
(Lat. 41°42′36″ N., long. 92°44′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grinnell Regional Airport.

ACE IA E5 Guthrie Center, IA [Amended]

Guthrie County Regional Airport, IA
(Lat. 41°41′13″ N., long. 93°26′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Guthrie County Regional Airport, and within 2 miles each side of the 360° bearing from the airport extending from the 6.4-mile radius to 9.8 miles north of the airport.

* * * * *

ACE IA E5 Oelwein, IA [Amended]

Oelwein Municipal Airport, IA
(Lat. 42°40′51″ N., long. 91°58′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oelwein Municipal Airport.

Issued in Fort Worth, Texas, on September 14, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–22889 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2004

[Docket Number USTR–2016–0015]

RIN 0350–AA08

Freedom of Information Act Policies and Procedures

AGENCY: Office of the United States Trade Representative.

ACTION: Proposed rule with request for comments.

SUMMARY: As part of a comprehensive review of agency practices related to the disclosure of records and information, the Office of the United States Trade Representative (USTR) is updating its implementing rule under the Freedom of Information Act (FOIA). The proposed rule, which is modeled after a template provided by the U.S. Department of Justice, describes how to make a FOIA request to USTR and how the FOIA Office, which includes the USTR officials who are authorized to work on FOIA requests, processes requests for records. We are in the process of renaming and reorganizing part 2004 to include all of the rules governing disclosure of USTR records and information, and with this proposed rule, we are moving the FOIA rule into a new subpart B to part 2004.

DATES: We must receive your written comments on or before November 22, 2016.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number for this rulemaking is USTR–2016–0015. USTR invites comments on all aspects of the proposed rule, and will revise the language as appropriate after taking all timely submitted comments into consideration. Copies of all comments will be available for public viewing at *www.regulations.gov* upon completion of processing. You can view a submission by entering the docket number USTR–2016–0015 in the search field at *http://www.regulations.gov.* We will post comments without change and will include any personal information you provide, such as your name, mailing address, email address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Janice Kaye, Monique Ricker or Melissa Keppel, Office of General Counsel, United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509, *jkaye@ustr.eop.gov; mricker@ustr.eop.gov; mkeppel@ustr.eop.gov,* or the USTR FOIA Public Liaison at *FOIA@ustr.eop.gov* or 202–395–3419.

SUPPLEMENTARY INFORMATION:

I. Background

USTR has undertaken a comprehensive review of agency practices related to the collection, use, protection and disclosure of USTR records and information. As a result of that review, USTR is updating it FOIA implementing rule. The FOIA, 5 U.S.C. 552, provides a right of access to certain records and information Federal agencies maintain and control. The FOIA requires each Federal agency to publish regulations describing how to submit a FOIA request and how the FOIA Office will process these requests. USTR's current FOIA rule, codified at 15 CFR part 2004, was last revised in in 2008. *See* 73 FR 35063, June 20, 2008. Due to the passage of time and amendments to the FOIA, we are completely rewriting and updating the rule. USTR's proposed rule is modeled after a template provided by the U.S. Department of Justice, and incorporates the practical experience of the FOIA staff. This rulemaking would move the FOIA rule to a new subpart B to part 2004, which we have proposed renaming and reorganizing to include all of the rules governing disclosure of USTR records and information.

II. Section-by-Section Analysis

Section 2004.1—Purpose and scope: This section describes the purpose of the regulation, which is to implement the FOIA, and explains general policies and procedures for requesters seeking access to records and information, and for processing requests by the USTR FOIA Office.

Section 2004.2—Proactive disclosures: This section describes USTR information the public can access without filing a FOIA request.

Section 2004.3—How to make a FOIA request: This section explains what an individual must do to submit a valid FOIA request to USTR and where a request should be sent. It also describes the information a requester must provide so USTR can identify the records sought and process their request.

Section 2004.4—Confidential commercial information: This section explains when and how a person or entity that submits information to USTR must identify confidential commercial information. It also describes how USTR staff will handle such information.

Section 2004.5—The USTR staff that processes FOIA requests: The USTR FOIA Office handles all FOIA requests. The section explains when the FOIA staff will consult with or refer a request to another Federal agency.

Section 2004.6—When we will respond to your request: This section describes the period of time within which USTR will respond to requests, *i.e.,* ordinarily within twenty working days after the date the request is perfected. It provides for an extension if there are unusual circumstances and explains the requirements for expedited processing. The section also describes our multitrack processing system.

Section 2004.7—What our response will include: This section explains that we will respond to your request in writing either with the requested records or a detailed explanation of the reasons why all of the requested records were not disclosed. We also will provide information about the right of appeal and the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration.

Section 2004.8—What you can do if you are dissatisfied with our response: This section describes when and how a requester may appeal a determination on a FOIA request and how and within what period of time USTR will make a determination on an appeal.

Section 2004.9—Fees: This section describes the different categories of requesters and the types and amounts of fees we may assess to process and respond to a FOIA request.

III. Regulatory Flexibility Act

USTR has considered the impact of the proposed rule and determined that if adopted as a final rule it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 2004

Administrative practice and procedure, Courts, Disclosure, Exemptions, Freedom of information, Government employees, Privacy, Records, Subpoenas, Testimony.

For the reasons stated in the preamble, the Office of the United States Trade Representative is proposing to amend chapter XX of title 15 of the Code of Federal Regulations as follows:

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. Add the subpart B authority citation to read as follows:

Authority: 5 U.S.C. 552; 19 U.S.C. 2171(e)(3); Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

Subpart B—Freedom of Information Act Policies and Procedures

■ 2. Add §§ 2004.1 through 2004.9 to subpart B to read as follows:

Sec.
2004.1 Purpose and scope.
2004.2 Proactive disclosures.
2004.3 How do I make a request for records under the FOIA?
2004.4 How will we handle confidential commercial information?
2004.5 Who is responsible for responding to your FOIA request?
2004.6 When will we respond to your FOIA request?
2004.7 What will our response to your FOIA request include?
2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?
2004.9 Fees.

§ 2004.1 Purpose and scope.

(a) This subpart contains the rules we follow when processing requests for records under the FOIA, a Federal law that provides a right of access to certain records and information Federal agencies maintain and control. You should read this subpart in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). Additionally, our FOIA Reference Guide, which is available on our Web site at *http://www.ustr.gov,* contains information about the specific procedures for making FOIA requests and descriptions of the types of records we maintain.

(b) To maximize the amount of information we can provide to you, we may process requests you make for records about yourself under both this subpart and subpart C to part 2004, our rules implementing the Privacy Act.

(c) We administer the FOIA with a presumption of openness. This means that as a matter of policy, we make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy does not create any right enforceable in court and you should not construe anything in this subpart as an entitlement to any service or to the disclosure of any record you are not entitled to under the FOIA.

§ 2004.2 Proactive disclosures.

You can access records that the FOIA requires us to make available for public inspection and copying through our Web site: *http://www.ustr.gov.* You also can find press releases, links to **Federal Register** notices and comments, fact sheets, speeches and remarks, reports, information about current initiatives, and historical information about U.S. trade issues. If you need assistance to locate a particular record, you can contact the Office of Public and Media Affairs at *MEDIA@ustr.eop.gov* or the FOIA Office at *FOIA@ustr.eop.gov.*

§ 2004.3 How do I make a request for records under the FOIA?

(a) *General information*—(1) *Where do I send my written request?* To make a request for records, you should write directly to the FOIA Office. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to *FOIA@ustr.eop.gov.* Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure that the FOIA Office receives your request without delay, you should include the notation "FOIA Request" in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we will not open attachments to emailed requests—you must include your request within the body of the email. We will not process email attachments.

(3) *Verifying your identity.* (i) If you are making a request for records about yourself or about another individual, you may receive greater access by submitting a notarized signature—yours if the records are about you, or the other individual's if the records are about them. You can fulfill this requirement by having the signature on your request letter witnessed by a notary.

(ii) Alternatively, you can provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. You can fulfill this requirement by including the following statement just before the signature on your request letter:

> I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].

(iii) If the other individual is deceased, you should submit proof of death such as a copy of a death certificate or an obituary. As an exercise of administrative discretion, we may require that you provide additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *How do I describe the records I want?* (1) You must describe the records you seek in sufficient detail to enable USTR personnel to locate them with a reasonable amount of effort. To satisfy this requirement, you should be as detailed as possible when describing the records you seek. To the extent possible, you should include specific information that may help us identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. For example, we cannot process a request for all records related to a particular trade negotiation or agreement or a request for all communications between USTR and a particular third party. Your request must include a date limitation, particular topics, and if asking for correspondence, the subject matter and the relevant parties with contact information such as their email addresses.

(2) If a request does not provide sufficient specific descriptive information for the FOIA Office reasonably to ascertain exactly which records you are requesting and to locate them, our response may be delayed or we may not be able to respond. Please note that in response to a FOIA request, we are not required to create records, conduct research for you, analyze data, answer written questions, or parse your narrative to try and determine the specific records you are seeking. You can contact the FOIA Office before you submit your request for assistance in describing the records you are seeking. If we determine that your request does not reasonably describe the records sought, we will explain why we cannot process your request and ask for additional information. For example, we might ask you to narrow your request if you ask for all documents in a certain date range but do not include a specific

subject matter, topic or personnel. We can help you reformulate or modify your request.

(3) We generally withhold predecisional, deliberative documents and classified trade negotiating and policy documents under 5 U.S.C. 552(b)(1) and (5).

(c) *Form or format of responsive records.* You can specify the preferred form or format (including electronic formats) for the records you seek. We will try to accommodate your request if the record is readily reproducible in that form or format.

(d) *Contact information.* You must provide contact information, such as your phone number, email address, and mailing address, so we will be able to communicate with you about your request and provide released records. If we cannot contact you, or you do not respond within thirty calendar days to our requests for clarification, we will close your request.

§ 2004.4 How will we handle confidential commercial information?

(a) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information that we obtain from a submitter that may be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation or a State or foreign government, but not including another Federal Government entity, which provides information, either directly or indirectly to the Federal Government.

(b) *How does a submitter designate confidential commercial information?* At the time of submission, the submitter of confidential commercial information must use good faith efforts to designate by appropriate markings any portion of its submission that it considers to be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). These designations expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When will we notify a submitter?* (1) We promptly will notify the submitter of confidential commercial information in writing whenever we receive a FOIA request or appeal for records containing such information if we determine that we may have to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4); or

(ii) We have reason to believe that the requested information may be protected from disclosure exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), but have not yet determined whether the information is protected from disclosure under that exemption or any other applicable FOIA exemption.

(2) Our notice either will describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, we may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure without publicly disclosing the records, instead of sending individual notifications.

(3) We promptly will notify the submitter whenever a requester files a lawsuit seeking to compel the disclosure of the submitter's confidential commercial information.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) We determine that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has officially been made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987, *Predisclosure notification procedures for confidential commercial information;* or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, we will give the submitter written notice of any final decision to disclose the information and a reasonable time period within which to object to disclosure under paragraph (e) of this section.

(e) *How can a submitter object to disclosure?* (1) If a submitter has any objections to disclosure, it should provide to us within the period listed in the notice a detailed written statement that specifies all grounds for withholding the particular information under any FOIA exemption. In order to rely on exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(2) A submitter who does not respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. We will not consider any information we receive after the date of any disclosure decision. Any information provided by the submitter under this section may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* We will consider the submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* We will notify the submitter whenever we decide to disclose information over the submitter's objection. Our written notice will include:

(1) A statement of the reasons why we did not sustain each of the submitter's disclosure objections;

(2) A description of the information to be disclosed or copies of the records as we intend to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(h) *When will we notify a requester?* We will notify the requester whenever we provide the submitter with notice and an opportunity to object to disclosure; whenever we notify the submitter of our intent to disclose the requested information; and whenever the submitter files a lawsuit to prevent the disclosure of the information.

§ 2004.5 Who is responsible for responding to your FOIA request?

(a) *In general.* The FOIA Office is authorized to grant or to deny any requests for records that USTR maintains and controls. In determining which records are responsive to a request, we ordinarily will include only records in our possession and control as of the date that we begin our search. We will notify you if we use any other date.

(b) *Consultation, referral and coordination.* If we believe that another Federal agency is better able to determine whether a record we locate in response to your request is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion, then we will proceed in one of the following ways:

(1) *Consultation.* When records originated with USTR but contain within them information of significance to another Federal agency or office, we typically consult with that other entity prior to making a release determination.

(2) *Referral.* If we believe that a different Federal agency is best able to determine whether to disclose the record, we typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is

presumed to be the best agency to make the disclosure determination. Whenever we refer any part of the responsibility for responding to a request to another agency, we will notify you of the referral, including the name of the agency and that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, we will coordinate with the originating agency to seek its views on disclosure of the record. We then will notify you of the release determination for the record that is the subject of the coordination.

(c) *Classified information.* On receipt of any request involving classified information, we will determine whether the information is currently and properly classified. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another Federal agency, we will refer responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), we will refer responsibility for responding to that portion of the request to the agency that classified the underlying information.

(d) *Timing of responses to consultations and referrals.* We will handle all consultations and referrals we receive according to the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* We may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 2004.6 When will we respond to your FOIA request?

(a) *In general.* We ordinarily will respond to a request within twenty days based on the order in which we receive the request. We may toll the twenty-day period if we need additional information from you in order to process the request or need to clarify fee assessment issues.

(b) *Multitrack processing.* We use a multitrack processing system that distinguishes between simple and more complex requests based on the estimated amount of work or time we need to process the request. Among the factors we consider are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. We will tell you if we place your request into other than the simple track, and if appropriate, we will offer you an opportunity to narrow or modify your request so that it can be placed in a different processing track.

(c) *Unusual circumstances*—(1) *What is an unusual circumstance?* We will notify you if we extend the twenty-day period for processing your request. The notice will include the unusual circumstances, such as the need to search for and collect the requested records from separate offices or facilities, a request that involves a voluminous amount of separate and distinct records, or the need for consultation, and the date by which we estimate we will complete processing your request. If the extension exceeds ten days, we will give you the opportunity to modify your request or arrange an alternative time period for processing the original or modified request.

(2) *Aggregating requests.* We may aggregate requests if it reasonably appears that multiple requests submitted either by a single requester or by a group of requesters acting in concert, involve related matters and constitute a single request that otherwise would involve unusual circumstances. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(d) *Expedited processing*—(1) *How do I request expedited processing?* When you submit your request or appeal, you can ask us to expedite processing. If you seek expedited processing, you must submit a statement, certified to be true and correct, explaining in detail the basis for your expedited processing request.

(2) *When will we grant expedited processing?* We will process requests and appeals on an expedited basis if we determine that:

(i) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about the specific government activity that is the subject of the request or appeal that extends beyond the public's right to know about government activity generally;

(iii) An individual will suffer the loss of substantial due process rights; or

(iv) the subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity that affect public confidence.

(3) *When will we respond to your request for expedited processing?* We will notify you within ten calendar days of the receipt of a request for expedited processing of our decision whether to grant or deny expedited processing. If we grant your request, we will give your request or appeal priority, place it in the processing track for expedited requests, and process it as soon as practicable. If we deny your request, we will process any appeal of that decision expeditiously.

§ 2004.7 What will our response to your FOIA request include?

(a) *In general.* We will notify you in writing of our determination regarding your request. To the extent practicable, we will communicate with you electronically.

(b) *Acknowledgement of requests.* We will acknowledge your request in writing, including a brief description of the records you are seeking, and assign an individualized tracking number. If we think that we will be unable to make a determination on your request within twenty days, we will send an acknowledgment within ten days and we may ask you to limit the scope of your request or arrange for a longer period for processing.

(c) *Granting requests.* If we decide to grant your request in full or in part, our response will include the records we are disclosing unless we have assessed fees under § 2004.9. If your request involves a voluminous amount of material or searches in multiple locations, we may provide interim responses, releasing the records on a rolling basis. If we assessed fees, we will disclose the records promptly upon payment.

(d) *Adverse determinations of requests*—(1) *What is an adverse determination?* Adverse determinations, or denials of requests, include decisions that: The requested record is exempt in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(2) *Our response.* If we make an adverse determination denying your request in any respect, our response will include:

(i) The name and title or position of the person responsible for the determination;

(ii) A brief statement of the reasons for the denial, including any FOIA exemption(s) we applied;

(iii) An estimate of the volume of any records or information we withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(iv) Information about the mediation services provided by the Office of Government Information Services of the National Archives and Records Administration; and

(iv) Your right to appeal our decision under § 2004.8.

(3) *Markings on released documents.* If technically feasible, we will clearly mark records that we are disclosing in part to indicate the location and show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption.

§ 2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?

(a) *How do I make an appeal?*—(1) *What can I appeal?* You can appeal any adverse determination in writing to our FOIA Appeals Committee within ninety calendar days after the date of our response. Examples of adverse determinations are provided in § 2004.7(d). You should specify the records that are the subject of your appeal and explain why the Committee should sustain the appeal.

(2) *Where do I send my appeal?* To avoid mail delivery delays caused by heighted security, we strongly suggest that you email any appeal to *FOIA@ustr.eop.gov.* Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To make sure that the FOIA Office receives your appeal without delay, you should include the notation "Freedom of Information Act Appeal" and the individualized tracking number in the subject line of your email or on the front of your envelope and also at the beginning of your appeal.

(b) *Who will decide your appeal?* (1) The FOIA Appeals Committee or designee will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA Appeals Committee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The FOIA Appeals Committee will notify you of its appeal decision in writing within twenty days from the date it receives the appeal. A decision that upholds the FOIA Office's determination in whole or in part will identify the reasons for the affirmance, including any FOIA exemptions applied, and notify you of your statutory right to seek judicial review. The notice also will inform you of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the FOIA Appeals Committee remands or modifies the original response, the FOIA Office will further process the request in accordance with the appeal determination and will respond directly to you.

(d) *When appeal is required.* Before seeking review by a court of an adverse determination, you generally first must submit a timely administrative appeal under this section.

§ 2004.9 Fees.

(a) *In general.* We will assess a fee to process your FOIA request in accordance with the provisions of this section and the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category. You can seek a fee waiver, which we will consider in accordance with the requirements in paragraph (h) of this section. We will contact you to resolve any fee issues that arise under this section. We will conduct searches, review and duplication in the most efficient and least expensive manner. We ordinarily will collect all applicable fees before sending copies of records to you. You must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade or profit interest, which can include furthering those interests through litigation. Our decision to place you in the commercial use category will be made on a case-by-case basis based on your intended use of the information. We will notify you of your placement in this category.

(2) *Direct costs* are the expenses we incur in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to your FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. You must show that your FOIA request is authorized by, and is made under the auspices of, an educational institution and that you are seeking the records to further scholarly research and not for a commercial use. To fall within this fee category, your request must serve the scholarly research goals of the institution rather than an individual research goal. We will advise you of your placement in this category.

Example 1. We would presume that a request from a professor of economics for records relating to the economic effects of a trade agreement, written on letterhead of the university's department of economics, is a request from an educational institution.

Example 2. We would not presume that a request from the same professor of economics seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing is a request from an educational institution, regardless of whether it was written on institutional stationery.

Example 3. We would presume that a request from a student in furtherance of the completion of a course of instruction is carrying out an individual research goal, rather than a scholarly research goal of the educational institution, and would not qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and not on a commercial basis, as defined in paragraph (b)(1) of this section. To fall within this fee category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records you seek are to further scientific research and not for a commercial use. We will advise you of your placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. We will not consider a request for records supporting a news-dissemination function to be for a commercial use. We will consider freelance journalists who demonstrate a solid basis for expecting publication through a news media entity as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, we also may consider your past publication record in making this determination. We will advise you of your placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine if any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including redacting the record and marking the appropriate exemptions. Review costs are properly charged even if we ultimately do not disclose a record. Review time also includes time spent both obtaining and considering any formal objection to disclosure a confidential commercial information submitter makes under § 2004.4, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts we expend to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, we will charge the following fees unless we granted a waiver or reduction of fees under paragraph (h) of this section, or the total fee to be charged is less than $25. If we do not meet the time limits for responding to your request, and if no unusual circumstance described in § 2004.6(c) applies, we will not assess fees.

(1) *Search.* (i) We will not assess any search fees for processing requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media. For all other requesters, we will charge for time spent searching even if we do not locate any responsive records or if we determine that the records are entirely exempt from disclosure. We will provide two hours of free search time except for requesters seeking records for a commercial use.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, we will charge based on the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s) plus 16 percent of that rate to cover benefits).

(iii) We will charge the direct costs if it is necessary to create a new computer program to locate the requested records. We will notify you of the costs associated with creating such a program, and you must agree to pay the associated costs before we build the program.

(iv) If your request requires the retrieval of records stored at a Federal records center, we will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

(2) *Duplication.* We will charge duplication fees to all requesters. We will honor your preference for receiving a record in a particular form or format if we can readily reproduce it in the form or format requested. If we provide photocopies, we will make one copy per request at the cost of $.15 per page. For copies of records produced on tapes, disks or other media, we will charge the direct costs of producing the copy, including operator time. Where we must scan paper documents in order to comply with your preference to receive the records in an electronic format, we will charge you the direct costs associated with scanning those materials. For other forms of duplication, we will charge the direct costs. We will provide the first 100 pages of duplication (or the cost equivalent for other media) without charge except for requesters seeking records for a commercial use.

(3) *Review.* We will charge review fees to requesters who make commercial use requests. We will assess review fees in connection with the initial review of the record, *i.e.,* the review we conduct to determine if an exemption applies to a particular record or portion of a record. We will not charge for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed no longer to apply, any costs associated with re-review of the records in order to consider the use of other exemptions may be assessed as review fees. We will charge review fees at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Other charges*—(1) *Special services.* We will charge you the direct cost of providing any special services you request, such as sending records by express mail, certifying that records are true copies, or providing multiple copies of the same document.

(2) *Interest.* We may assess interest charges on any unpaid fees starting on the 31st day following the day on which we sent the bill to you at the rate prescribed in Interest and Penalty on Claims, 31 U.S.C. 3717.

(e) *Aggregating requests.* We may aggregate separate FOIA requests for the purpose of assessing fees when we reasonably believe that a requester or a group of requesters acting in concert, is dividing a request into a series of requests for the purpose of avoiding or minimizing fees. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(f) *If we anticipate fees will exceed $25.* Unless you have indicated in advance a willingness to pay fees as high as anticipated, we will notify you if we estimate that charges will exceed $25.

(1) We will not process your request until you either commit in writing to pay the actual or estimated total fee, or designate some amount of fees you are willing to pay. If you are a noncommercial use requester and we have not yet provided your statutory entitlements (*i.e.,* two hours of search time and 100 free pages), you can tell us to stop when we exhaust the statutory entitlements. We will start the twenty-day response clock when we receive your written reply.

(2) If you agree to pay some designated amount of fees, but we estimate that the total fee will exceed that amount, we will toll processing when we notify you of the estimated fees in excess of the amount you had indicated a willingness to pay. When we receive your written commitment to pay the actual or estimated total fee, or designate an additional amount of fees you are willing to pay, we will restart the processing clock.

(3) If you decide to reformulate your request to reduce costs, we will consider it to be a new request that restarts the twenty-day response clock. You can contact USTR's FOIA Public Liaison at *FOIA@ustr.eop.gov* for assistance.

(4) We will close your request if you do not respond in writing within thirty calendar days after the date we notify you of the fee estimate.

(g) *Advance payments.* (1) If we determine or estimate that the total fee will exceed $250, we may require you to make an advance payment up to the amount of the entire anticipated fee before we begin to process your request.

(2) If you previously failed to pay a properly charged FOIA fee to any Federal agency within thirty calendar days of the billing date, we may require proof that you paid the full amount due, plus any applicable interest on that prior request, and that you make an advance payment to us of the full amount of any anticipated fee before we begin to process a new request or continue to process a pending request or any pending appeal. If we have a reasonable basis to believe that you have misrepresented your identity in order to avoid paying outstanding fees, we may require you to provide proof of identity.

(3) If we require advance payment, we will not consider your request received and will not do any additional work until we receive the required payment. We will close your request if you do not pay the advance payment within thirty calendar days after the date of our fee determination.

(h) *Requirements for waiver or reduction of fees.* (1) You can seek a fee waiver or reduction by explaining in writing how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether to waive or reduce a fee we will consider whether disclosure of the requested information would:

(i) Shed light on the operations or activities of the government. The subject of the request must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated.

(ii) Likely contribute significantly to public understanding of those operations or activities. Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding. The disclosure must contribute to the understanding of a reasonably broad audience—the public-at-large as opposed to a narrow segment of the population. We will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.

(iii) Is to further an identified commercial interest and whether that is the primary interest advanced by the request. For example, we ordinarily presume that the public's interest is greater than the requester's commercial interest when we receive a request from a representative of the news media. We will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return primarily serves the public interest.

(2) We will grant a partial waiver when only some of the records to be released satisfy the requirements in this section.

(3) You should include your fee waiver or reduction request when you first submit your FOIA request to us. You can submit a fee waiver or reduction request at a later time so long as the underlying record request is pending or on administrative appeal. If you already committed to pay fees and subsequently request a waiver of those fees that we deny, you must pay any costs incurred up to the date the fee waiver request was received.

Janice Kaye,

Chief Counsel for Administrative Law, Office of the U.S. Trade Representative.

[FR Doc. 2016–22863 Filed 9–22–16; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

Federal Transit Administration

49 CFR Part 613

[Docket No. FHWA–2016–0016; FHWA RIN 2125–AF68; FTA RIN 2132–AB28]

Metropolitan Planning Organization Coordination and Planning Area Reform

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FHWA and FTA are reopening the comment period for the NPRM that was published on June 27, 2016, at 81 FR 41473, in order to receive additional public comment on targeted issues. The NPRM proposes revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The original comment period closed on August 26, 2016. The FHWA and FTA received a number of requests to extend the comment period. The FHWA and FTA recognize that those interested in commenting on this important program may not have had the opportunity to provide comments and that the comment period should be reopened. Therefore, the comment period is being reopened.

DATES: Comments must be received on or before October 24, 2016.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov* and the Government Publishing Office's Web site at: *http://www.gpo.gov.*

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–0847; or Ms. Janet Myers, Office of the Chief Counsel (HCC–30), (202) 366–2019. For FTA: Ms. Sherry Riklin, Office of Planning and Environment, (202) 366–5407; Mr. Dwayne Weeks, Office of Planning and Environment, (202) 493–0316; or Mr. Christopher Hall, Office of Chief Counsel, (202) 366–5218. Both agencies are located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET for FHWA, and 9 a.m. to 5:30 p.m., ET for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2016, the FHWA and FTA published a proposed rule to revise the transportation planning regulations to promote more effective regional planning by States and MPOs. See 81 FR 41473. The goal of the proposed revisions is to promote unified planning products for each urbanized area, even if there are multiple MPOs designated within that urbanized area. Specifically, the NPRM proposed that MPOs would develop a single metropolitan transportation plan, a single transportation improvement program (TIP), and a jointly established set of performance targets for the entire urbanized area and contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. If multiple MPOs are designated within that urbanized area, they would jointly prepare these unified planning products. To accomplish this, the proposed revisions would clarify that the metropolitan planning area (MPA) must include the entire urbanized area and contiguous area expected to become urbanized within 20 years.

As discussed in the NPRM, these proposed revisions would better align the planning regulations with statutory provisions concerning the establishment of MPA boundaries and the designation of MPOs. This includes the statutory requirement for the MPA to include an urbanized area in its entirety together with the contiguous area expected to become urbanized within 20 years, and the exception provision to allow more than one MPO to serve a single MPA if warranted by the size and complexity of the MPA. This return to the original legislative intent is in alignment with the findings of the draft report *Beyond Traffic: Trends and Choices 2045. Beyond Traffic* was released by the Department in February 2015. It examines the long-term and emerging trends affecting our Nation's transportation system and the implications of those trends. It describes how demographic and economic trends, as well as changes in technology, governance, and our climate, will increase the importance of our metropolitan regions in making decisions that cross State, political, socioeconomic, and often transportation planning lines. By 2045, the population is anticipated to increase by 70 million people, with most of that growth occurring in metropolitan areas.

The rulemaking would establish clearer operating procedures, and reinstate certain coordination and decisionmaking requirements for situations where there is more than one MPO serving an MPA. The proposed rule would require unified planning products for the MPA, including jointly established performance targets within an MPA, and a single metropolitan transportation plan and TIP for the entire MPA in order to result in planning products that reflect the regional needs of the entire urbanized area. These unified planning products would be jointly developed by the multiple MPOs in such MPAs where more than one MPO is designated.

The FHWA and FTA propose to phase in implementation of these proposed coordination requirements and the proposed requirements for MPA boundary and MPO boundaries agreements over 2 years.

Additional Public Comments Sought on Specific Issues

The FHWA and FTA are reopening the comment period in order to receive public comment on certain issues raised in the NPRM. Specifically, the FHWA and FTA are looking for specific and detailed comments that contribute to the understanding of the impact of the proposed requirements for unified planning products where multiple MPOs serve the same urbanized area, potential exceptions that should be included in the final rule, and criteria for applying such exceptions. The FHWA and FTA also seek specific and detailed comments on the expected costs of implementing the proposed rule. The FHWA and FTA are seeking comments specific to these issues as we decide whether to finalize any provisions within the scope of the NPRM. Previously submitted comments should not be resubmitted.

The original comment period for the NPRM closed on August 26, 2016. The FHWA and FTA ask commenters to focus on the specific issues open for public comment, as discussed in the above paragraph. Other comments will be considered to the extent practicable. To allow time for interested parties to submit comments on the targeted issues highlighted above, the comment period is being reopened until October 24, 2016.

Issued in Washington, DC, on September 19th 2016, under authority delegated in 49 CFR 1.85 and 1.91.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

[FR Doc. 2016–22907 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

29 CFR Parts 2520 and 2590

RIN 1210–AB63

Proposed Revision of Annual Information Return/Reports; Proposed Rule

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The purpose of this Notice is to announce an extension of the comment period on the Notice of Proposed Revision of Annual Information Return/Reports published in the **Federal Register** on July 21, 2016, by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, and the separate but related Notice of Proposed Rulemaking published in the **Federal Register** on July 21, 2016, by the Department of Labor.

DATES: The comment period for the Notice of Proposed Revision of Annual Information Return/Reports and the Notice of Proposed Rulemaking is extended to December 5, 2016.

ADDRESSES: To facilitate the receipt and processing of written comment letters on the proposed regulation, interested persons are encouraged to submit their comments electronically. You may submit comments, identified by RIN 1210–AB63, by any of the methods described in the Notice of Proposed Revision of Annual Information Return/Reports (81 FR 47534) and Notice of Proposed Rulemaking (81 FR 47496). All comments received will be made available to the public, posted without change to *www.regulations.gov* and *www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mara S. Blumenthal, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, (202) 693–8523 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor's Employee Benefits Security Administration, together with the Internal Revenue Service and the Pension Benefit Guaranty Corporation (together Agencies) published a Notice of Proposed Revision of Annual Information Return/Reports in the **Federal Register** on July 21, 2016 (81 FR 47534). The proposed revisions involved the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan. The Department of Labor simultaneously published a Notice of Proposed Rulemaking, which contains proposed amendments to the Department's related annual reporting regulations (81 FR 47496).

The Notices have generated substantial interest by stakeholders who wish to provide input into the development of the final form revisions and regulations. Several stakeholder groups submitted written requests for additional time to comment. Comments on the proposal, including such requests, are made available electronically at *www.dol.gov/agencies/ebsa.* The commenters generally argued that the original 75-day comment period was not enough time given the scope and significance of the proposed form revisions and regulatory amendments. Some also noted the current deadline for submitting comments (October 4, 2016) is shortly before the October 15, 2016 deadline for filing the 2015 Form 5500 and 2015 Form 5500–SF for calendar year plans relying on an IRS Form 5558 extension. The commenters stated that the proximity of the two deadlines would make it difficult for personnel involved in the evaluation of and preparation of comments regarding the proposed forms revision and regulatory amendments to devote adequate time to that work because the same personnel are already engaged in preparation and filing of 2015 Forms 5500 and Forms 5500–SF. Certain commenters also stated that staff responsible for contributing to comments on the forms revisions and regulatory proposals will be focused during the same time period on compliance activities related to the Department's final rule on conflicts of interest—retirement investment advice and related prohibited transaction exemptions. The commenters suggested different extensions that ranged from 60 days to 105 days.

The Agencies are interested in facilitating a robust and thoughtful public comment process on these important improvements to the Form 5500 and Form 5500–SF annual return/reports. An important goal for the Agencies is to complete the forms revision and regulatory amendments aspect of the project in advance of key procurement and system development deadlines that are part of the related effort to recompete of the contract for the ERISA Filing Acceptance System II (EFAST2)—the wholly electronic system operated by a private-sector contractor for the processing of Form 5500 and Form 5500–SF annual return/report. The Agencies explained in the **Federal Register** Notices that the forms revision and regulatory amendments proposals generally are being coordinated with a recompete of the EFAST2 contract. The Agencies also explained that the majority of proposed forms revisions are currently targeted for implementation in the Plan Year 2019 Form 5500/5500–SF annual return/reports. We also noted that development of EFAST2 changes pursuant to a new contract could begin in spring 2018, with processing under such a new contract starting on January 1, 2020.

Based on the requests from a range of stakeholder groups, the Agencies have decided to extend the public comment period on the proposed forms revisions and regulatory amendments from the original October 4 deadline to December 5, 2016. This extension will provide interested persons with an additional two months to prepare and submit comments, while also respecting the need to keep the regulatory aspect of the project moving forward to keep pace with procurement and system development objectives of the recompete contract acquisition plan. Although technically not published in the **Federal Register** until July 21, 2016, the Notice of Proposed Forms Revision and the Notice of Proposed Rulemaking were released to the public and made available online on July 11, 2016—10 days prior to the commencement of the formal comment period. The extension of the comment period to December 5, 2016, thus provides a total of 147 days to evaluate the proposal and provide written comments.

The Agencies are not prepared at this time to grant a more extended deadline for public comments on the proposed form revisions and regulatory amendments because of concern about potential adverse effects on the timing and cost of the EFAST2 recompete process. In that regard, the Department published a "Request for Industry Feedback," RFI: DOL–OPS–16–RFI–0716PML (available at *fbo.gov*) in connection with the EFAST2 recompete process, which also requested comments by October 4, 2016. The deadline for capable businesses to respond on the Request for Industry Feedback is not being extended in this Notice.

Finally, a number of commenters asked that the Agencies hold a public hearing on the proposals following the close of the written comment period. One commenter also asked that the effective date of any final form changes be delayed until plan years beginning on or after January 1, 2020. In the Department's view, both requests are premature in the context of a decision whether to extend the public comment period on the proposals. It is not clear at this time that a public hearing will necessarily contribute to the decision-making process by clarifying one or more significant issues affecting the proposal, but the Agencies will be in a better position to evaluate that issue after receiving the public comments on the proposals. Similarly, the issue of the effective date of final form changes is better addressed in a final notice of form revisions after the Agencies have had the benefit of public input on the proposals and have decided upon the final form changes and regulatory amendments that will be adopted.

The Internal Revenue Service and the Pension Benefit Guaranty Corporation have agreed to this extension of the comment period for purposes of portions of the Notice of Proposed Forms Revision that address annual reporting requirements under the Internal Revenue Code and Title IV of ERISA.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits, Security Administration, Department of Labor.

[FR Doc. 2016–22989 Filed 9–22–16; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0305; FRL–9952–81–Region 9]

Approval of California Air Plan Revisions, Ventura County Air Pollution Control District; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD or District) portion of the California State Implementation Plan (SIP). The State of California (State) is required under the Clean Air Act (CAA or Act) to adopt and implement a SIP-approved Prevention of Significant Deterioration (PSD) permit program. These proposed SIP revisions would incorporate a PSD rule for the VCAPCD into the SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment and unclassifiable areas within the District. We are taking public comments on this proposal and plan to follow with a final action following consideration of the public comments received.

DATES: Any comments must arrive by October 24, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0305 at *http://www.regulations.gov,* or via email to *R9airpermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972–3328, *Tsai.Ya-Ting@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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  C. Transfer of Existing Permits Issued by the EPA and Program Implementation
  D. Public Comment and Proposed Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates on which they were revised or repealed by the local air agency and the dates of the corresponding SIP submittals to the EPA by the California Air Resources Board (CARB). Through these submittals, CARB is requesting revisions to the SIP to incorporate the PSD program for the VCAPCD into the SIP. The CARB's submittal of March 11, 2016 requested the EPA's approval of VCAPCD Rule 26.13 into the SIP, and its submittal dated August 23, 2011 requested that the EPA remove VCAPCD Rule 26.10 from the SIP.

TABLE 1—SUBMITTED RULE ACTIONS

Rule No.	Rule title	Action	Action date	Submitted date
26.10	New Source Review—Prevention of Significant Deterioration	Repealed	6/28/2011	8/23/2011
26.13	New Source Review—Prevention of Significant Deterioration (PSD)	Revised	11/10/2015	3/11/2016

On April 19, 2016, the EPA determined that the March 11, 2016 CARB submittal requesting approval of VCAPCD Rule 26.13 into the SIP met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On February 23, 2012, the CARB submittal requesting the removal of VCAPCD Rule 26.10 from the SIP was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V.

B. Are there other versions of these rules?

The EPA approved Rule 26.10, New Source Review—Prevention of Significant Deterioration into the VCAPCD portion of the California SIP on December 7, 2000 (65 FR 76567); however, the EPA's approval of this rule was not an approval of a PSD program for the VCAPCD. Rather, VCAPCD Rule 26.10 simply confirmed that new major sources and major modifications within the District must comply with the applicable requirements for federal PSD permitting in 40 CFR 52.21, and provided that any such source must obtain separate permits from the District and the EPA.

On June 28, 2011, VCAPCD adopted Rule 26.13, New Source Review—Prevention of Significant Deterioration (PSD) with the intent to assume PSD permitting responsibility for sources located in Ventura County upon the EPA's SIP approval of the rule. On the same date, the VCAPCD repealed local PSD Rule 26.10 for purposes of State and local law. In a letter dated August 4, 2011, the VCAPCD submitted a request to CARB that Rule 26.13 be added to the Ventura County portion of the SIP and that Rule 26.10 be removed from the SIP. On August 23, 2011, CARB submitted a proposed SIP revision to the EPA requesting the approval of Rule 26.13 into the SIP and the removal of Rule 26.10 from the SIP.

However, EPA staff subsequently determined that the version of Rule 26.13 adopted by the District on June 28, 2011 contained certain deficiencies and could benefit from clarifying changes, and notified the District about these deficiencies. To address these deficiencies, the VCAPCD adopted revisions to Rule 26.13 on November 10, 2015, and CARB submitted the revised version of this rule to the EPA for SIP approval on March 11, 2016. Accordingly, the EPA's proposed action addresses the current version of Rule 26.13, as revised on November 10, 2015 and submitted to the EPA on March 11, 2016. If the EPA approves Rule 26.13, the EPA will add revised Rule 26.13 to the SIP and Rule 26.10 will be removed from the SIP.

C. What is the purpose of the submitted rule actions?

Section 110(a) of the CAA requires states to adopt and submit regulations for the implementation, maintenance and enforcement of the primary and secondary NAAQS. Specifically, sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) of the Act require such state plans to meet the applicable requirements of section 165 relating to a pre-construction permit program for the prevention of significant deterioration of air quality and visibility protection. VCAPCD Rule 26.13 is intended to implement a pre-construction PSD permit program as required by section 165 of the CAA for certain new and modified major stationary sources located in attainment and unclassifiable areas within the District. Because the State does not currently have a SIP-approved PSD program within the VCAPCD, the EPA is currently the PSD permitting authority within the VCAPCD, and implements the federal PSD program under 40 CFR 52.21, as Rule 26.10 reiterates. Approval of VCAPCD Rule 26.13 into the SIP, and removal of Rule 26.10 from the SIP, will transfer PSD permitting authority from the EPA to the VCAPCD. The EPA would then assume the role of overseeing the VCAPCD's PSD permitting program, as intended by the CAA.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule actions?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Other relevant statutory and regulatory provisions for our review of the submitted rule include CAA section 165 and section 51.166 of title 40 of the Code of Federal Regulations (40 CFR 51.166). CAA section 165 requires states to adopt a pre-construction permitting program for certain new and modified major stationary sources located in attainment areas and unclassifiable areas. 40 CFR 51.166 establishes the specific requirements for SIP-approved PSD permit programs that must be met to satisfy the requirements of section 165 of the CAA.

B. Do the rules meet the evaluation criteria?

With some exclusions and revisions, VCAPCD Rule 26.13, as submitted by the CARB in March 2016, incorporated by reference the EPA's federal PSD program requirements at 40 CFR 52.21, as of September 1, 2015. We generally consider the EPA's PSD permit program requirements at 40 CFR 52.21 to be consistent with the criteria for SIP-approved PSD permit programs in 40 CFR 51.166. However, we conducted a review of VCAPCD Rule 26.13 to ensure that all requirements of 40 CFR 51.166 were met by this District rule. Our detailed evaluation is available as an attachment to the technical support document (TSD) for this proposed rulemaking action. We also reviewed the revisions that the District made to the provisions of 40 CFR 52.21 that were incorporated by reference into the rule, such as revising certain terms and definitions to reflect that the District, rather than the EPA, will be the PSD permitting authority following SIP approval of the District's PSD rule. We also determined that the removal of Rule 26.10 from the SIP would be appropriate concurrent with approval of Rule 26.13 into the SIP, because the applicable PSD requirements for federal PSD permitting in 40 CFR 52.21 referenced in Rule 26.10 would no longer apply once the EPA approves VCAPCD's Rule 26.13 into the SIP. Based on our review of Rule 26.13 and the underlying statutory and regulatory requirements governing this action, we are proposing to find the SIP revision for the District's PSD rules acceptable under CAA sections 110(a), 110(l) and 165 and 40 CFR 51.166.

The EPA's TSD for this rulemaking action has more information about Rule 26.13, including our evaluation and recommendation to approve it into the SIP.

C. Transfer of Existing Permits Issued by the EPA and Program Implementation

The VCAPCD requested approval to exercise its authority to administer the PSD program with respect to those sources located in Ventura County that have existing PSD permits issued by the EPA. This would include authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (*e.g.*, modifications, amendments, or revisions of any nature), and authority to enforce such permits.

Consistent with section 110(a)(2)(E)(i) of the Act, the SIP submittal and additional information provided by the District make clear that that VCAPCD has the authority under state statute and rule to administer the PSD permit program, including but not limited to the authority to administer, process and issue any and all permit decisions, and enforce PSD permit requirements within the District. This applies to PSD permits that the District will issue and to existing PSD permits issued by the EPA that are to be transferred to the District upon the effective date of the EPA's approval of the PSD SIP submittal.

We have also determined that the District has adequate personnel and funding to administer the PSD program.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve District Rule 26.13 into the Ventura County portion of the SIP because we believe it fulfills all relevant CAA requirements. We also propose to remove District Rule 26.10 from the SIP concurrent with our final approval of Rule 26.13, for the reasons discussed above. If we take final action to approve Rule 26.13, our final action will incorporate Rule 26.13 into the federally enforceable SIP and remove Rule 26.10 from the SIP.

We will accept comments from the public on this proposal until October 24, 2016.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference VCAPCD Rule 26.13 as described in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through *www.regulations.gov* and in hard copy at U.S. Environmental Protection Agency Region IX (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105–3901.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–22883 Filed 9–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WP Docket No. 16–261; RM–11719; RM–11722; FCC 16–110]

Amendment To Improve Access to Private Land Mobile Radio Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) proposes and seeks comment on proposals to revise the Commission's rules governing private land mobile radio (PLMR) services, such as allowing 806–824/851–869 MHz (800 MHz) band incumbent licensees in a market a window in which to apply for Expansion Band and Guard Band frequencies before the frequencies are made available to applicants for new systems, extending conditional licensing authority to applicants for site-based licenses in the 800 MHz and 896–901/935–940 MHz (900 MHz) bands, making available for PLMR use frequencies that are on the band edge between the Industrial/Business (I/B) Pool and either General Mobile Radio Service (GMRS) or Broadcast Auxiliary Service (BAS) spectrum, making certain frequencies that are designated for central station alarm operations available for other PLMR uses, and accommodating certain railroad operations.

DATES: Submit comments on or before November 22, 2016 and reply comments on or before December 22, 2016.

ADDRESSES: You may submit comments, identified by WP Docket No. 16–261, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Melvin Spann, *Melvin.Spann@fcc.gov,* Wireless Telecommunications Bureau, (202) 418–1333, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), adopted August 17, 2016, and released August 18, 2016. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The full text may also be downloaded at: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0728/FCC-16-95A1.pdf.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

I. Introduction

A. Proposal To Revise Part 90 and Make Related Changes

1. In this NPRM, we propose to amend part 90 of the Commission's rules to expand access to private land mobile radio (PLMR) spectrum. Specifically, we grant in part petitions for rulemaking filed by the Land Mobile Communications Council (LMCC) proposing to amend our Rules to allow 806–824/851–869 MHz (800 MHz) band incumbent licensees in a market a six-month period in which to apply for Expansion Band and Guard Band frequencies before the frequencies are made available to applicants for new systems; and to amend section 90.159 of our rules to extend conditional licensing authority to applicants for site-based licenses in the 800 MHz and 896–901/935–940 MHz (900 MHz) bands. In addition, on our own motion but suggested by recent waiver requests, we propose to amend section 90.35 of our rules to make available for PLMR use frequencies that are on the band edge between the Industrial/Business (I/B) Pool and either General Mobile Radio Service (GMRS) or Broadcast Auxiliary Service (BAS) spectrum, to make certain frequencies that are designated for central station alarm operations available for other PLMR uses, and to make certain updates and corrections; and to amend sections 90.219(d)(3) and 90.261(f) of our rules to accommodate certain railroad operations.

2. Spectrum in the 450–470 MHz band is designated for use by various services, including tart 74 BAS, part 90 PLMR, and part 95 GMRS. The I/B Pool frequency table in section 90.35(b)(3) of the Commission's rules sets forth the assignable frequencies in those segments of the band that are available to I/B eligibles. Frequencies at or near the band edges between part 90 spectrum and part 74 or 95 spectrum were not designated for use by any of these services because they could not be utilized without overlapping spectrum designated for the other service.

3. When these frequency designations were adopted, PLMR stations operated in wideband (25 kilohertz) mode. Since the beginning of 2013, however, the Commission has required narrowbanding (maximum 12.5 kilohertz bandwidth or equivalent efficiency) by PLMR licensees in the 150–174 MHz and 421–470 MHz bands. With the implementation of narrowbanding and the availability of very-narrowband 4-kilohertz equipment, some frequencies near the band edges now can be used without overlapping spectrum designated for other services. In 2014, the Mobility Division (Division) of the Wireless Telecommunications Bureau (WTB) granted waivers to permit PLMR licensees to operate with a 4-kilohertz emission designator on frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, which are between BAS spectrum and PLMR spectrum but not designated for use on a primary basis by any service; and on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz, which are between PLMR spectrum and GMRS spectrum but not designated for use by any service. The Division concluded that waivers were appropriate because very-narrowband PLMR stations can operate on these frequencies without overlapping BAS or GMRS channels, so the public interest would be served by facilitating access to spectrum in congested areas.

4. We propose to amend the I/B Pool frequency table to add frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, with the limitation that the authorized bandwidth not exceed 6 kilohertz (the widest bandwidth that will avoid overlap between the frequency pairs). We tentatively conclude that it would be in the public interest to make additional frequencies available to PLMR applicants that can be utilized without overlapping the occupied bandwidth of currently assignable frequencies and without causing harmful interference. We seek comment on this proposal. We note that frequency pairs 451/456.00625 MHz and 451/456.0125 MHz are lower-adjacent to a set of frequency pairs for which the concurrence of the Power Coordinator is required if the proposed interference contour overlaps an existing service contour. We therefore also seek comment on whether to require such concurrence for either of these frequency pairs. We ask commenters to address whether any operational restrictions should be imposed to preclude interference to other users, such as limits on antenna height or power. We also seek comment from operators that have received waivers and any operators with adjacent frequency assignments in the same geographic area about whether they have experienced any interference issues, and if so, how and if they have been resolved.

5. The Division also granted waivers to permit operation on frequency pair 451/456.009375 MHz with an 8-kilohertz emission designator in locations where no applicant had requested frequency pairs 451/456.00625 MHz and 451/456.0125 MHz. The purpose of our proposed rule change is to permit the most efficient use of scarce spectrum. We therefore believe that this purpose is better served by adding two 6-kilohertz channels in an area than one 8-kilohertz channel, in order to accommodate more users and encourage the deployment of more efficient equipment. Therefore, we tentatively conclude that we should not add frequency pair 451/456.009375 MHz to the I/B Pool frequency table, though stations authorized on the channel pursuant to waiver would be grandfathered. We seek comment on this tentative conclusion, and on whether any other interstitial frequencies should be added to the table.

6. In the same Order, the Division denied requests for waivers to operate on frequency pair 451/456.0000 with a 4-kilohertz emission designator. It noted that the proposed operations would overlap the 450–451 MHz and 455–456 MHz bands, in which BAS low power auxiliary stations are authorized to operate. The Division concluded that assigning channels for PLMR operations that overlap designated BAS spectrum would not serve the public interest. We seek comment on whether I/B use of frequency pair 451/456.0000 would in fact cause harmful interference to BAS operations. In particular, commenters should address whether BAS low power auxiliary stations operate over the entire 450–451 MHz and 455–456 MHz bands, and whether PLMR operations that overlap two kilohertz of these one megahertz bands would cause harmful interference to BAS operations.

7. We seek comment on the costs and benefits of each of the above-described proposals or possible rule changes regarding the expansion of PLMR spectrum use to frequencies located between BAS spectrum and PLMR spectrum.

8. Finally, we propose to amend the I/B Pool frequency table to add frequency pairs 462/467.5375 MHz and 462/467.7375 MHz, with the limitation that the authorized bandwidth not

exceed 4 kilohertz (the widest bandwidth that will avoid overlapping GMRS frequencies).[1] When the Division granted a waiver to permit operation on frequency pair 462/467.7375 MHz, it noted that adjacent frequency pair 462/467.750 MHz is exempt from narrowbanding and still may be assigned with a channel bandwidth of 25 kilohertz, which would be overlapped by 4-kilohertz operation on frequency pair 462/467.7375 MHz. The Division nevertheless granted the waiver because there was no incumbent licensee on frequency pair 462/467.750 MHz in any of the particular areas where a waiver was requested that had an occupied bandwidth greater than 20 kilohertz, so there was no overlap of occupied bandwidth with the proposed 4-kilohertz emission. We seek comment on our proposal—including its costs and benefits—and on whether we should instead refrain from adding frequency pair 462/467.7375 MHz in order to preserve the availability of adjacent frequency pair 462/467.750 MHz for wideband operations, but grandfather stations authorized on the channel pursuant to waiver. Commenters are asked to discuss whether wideband use of frequency pair 462/467.750 MHz is common, and whether we should expect any growth of wideband operations on the channel.

9. The alarm industry uses a number of methods to maintain communications paths used to monitor alarm systems at customer premises from central station alarm monitoring centers. Certain frequencies are designated for the use of persons rendering a central station commercial protection service. Specifically, four 12.5-kilohertz frequency pairs and the upper-adjacent 6.25-kilohertz interstitial frequency pairs are designated for central station protection service use nationwide (nationwide frequencies), and six 12.5-kilohertz frequency pairs and the upper-adjacent 6.25-kilohertz interstitial frequency pairs are set aside for central station protection service in the 88 urbanized areas with a population over 200,000 in the 1960 Census (urban frequencies).

10. A recent review of the Commission's Universal Licensing System suggests that these frequencies are currently underutilized. In particular, 39 of the urbanized areas where the additional frequencies are set aside for central station protection service have no central station protection service licensees,[2] and no more than half of the frequencies are assigned in any of the other 49 areas.[3] The need of central stations for these frequencies appears to have diminished since this spectrum was set aside for their use over 40 years ago, which may be attributable to advancements in services and technologies that can be used to complete the communications path between the location of the alarm and the alarm services' central office, such as cellular telephone, satellite communication services, and the Internet. In recent years, entities that do not provide central station commercial protection service have expressed interest in utilizing these frequencies for other purposes.

11. As an initial matter, we propose to modify section 95.35(c)(63) to remove the use limitation in the urbanized areas where the urban frequencies are not in use. We tentatively conclude that it would be in the public interest to make these frequencies available for other PLMR operations in those areas. We seek comment on this proposal, including its costs and benefits.

12. In addition, we seek comment on other ways to expand PLMR users' access to frequencies that are designated, but no longer needed, for central station commercial protection services, including by making available channels in urbanized areas where some of the urban frequencies are in use. Commenters should address related costs and benefits associated with such proposals. Commenters also should address the current and expected future need for central station commercial protection service channels in the 460–470 MHz band. For example, in the areas where some frequencies are in use, how many urban frequencies should continue to be set aside? Are the nationwide frequencies sufficient to meet demand, without any urban frequencies? Can central station commercial protection service and other PLMR operations coexist? Commenters advocating eliminating the use restriction on any frequency in any area where it currently is in use should discuss how to protect incumbent central station commercial protection service operations from harmful interference.

13. We also take this opportunity to propose to correct certain errors in section 90.35. Specifically, we propose to restore to the list of airports at or near which certain frequencies are reserved for commercial air transportation services two airports (Kahului and Ke-Ahole) that inadvertently were deleted, and correct the coordinates for one airport that were listed incorrectly (Boeing/King County International), the last time the list was updated. We also seek comment on whether any airports should be added to or removed from the list, which has not been updated since 2002. In addition, we propose to correct the entries in the I/B Pool table for frequencies from 153.0425 MHz to 153.4025 MHz for which the notation indicating that the concurrence of the Petroleum Coordinator is required was inadvertently deleted when certain narrowbanding rules were adopted. We seek comment on these proposals.

14. Pursuant to section 90.159(b), most applicants proposing to operate a new PLMR station, or to modify an existing PLMR station, on frequencies below 470 MHz that require frequency coordination are permitted to operate the proposed station during the pendency of the application for a period of up to 180 days, beginning 10 days after the application is submitted to the Commission. This conditional authority is not available for applicants in the PLMR frequency bands above 470 MHz, where spectrum is available on an exclusive basis. When the Commission enacted the rule granting conditional authority below 470 MHz, it stated that it was being conservative by implementing conditional authority only in shared bands, and could consider expanding the concept in the

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[1] GMRS frequencies 462.5500 MHz, 462.7250 MHz, 467.5500 MHz, and 467.7250 MHz have an authorized bandwidth of twenty kilohertz. The Commission has proposed to migrate GMRS to narrowband technology. We nonetheless conclude that it would be premature to permit PLMR operation on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz with an authorized bandwidth exceeding four kilohertz prior to a determination of what the GMRS narrowbanding timetable would be.

[2] Akron, OH; Albuquerque, NM; Baltimore, MD; Canton, OH; Chicago, IL/IN; Cleveland, OH; Columbus, OH; Dallas, TX; Des Moines, IA; El Paso, TX; Ft. Lauderdale–Hollywood, FL; Ft. Worth, TX; Harrisburg, PA; Honolulu, HI; Houston, TX; Indianapolis, IN; Jacksonville, FL; Memphis, TN; Miami, FL; Oklahoma City, OK; Omaha, NE; Orlando, FL; Pittsburgh, PA; Salt Lake City, UT; San Antonio, TX; Scranton, PA; Seattle, WA; Spokane, WA; Springfield, MA; St. Louis, MO/IL; St. Petersburg, FL; Syracuse, NY; Tacoma, WA; Tampa, FL; Tulsa, OK; Washington, DC; Wichita, KS; Wilkes-Barre, PA; and Youngstown–Warren, OH/PA.

[3] Albany–Troy–Schenectady, NY; Allentown–Bethlehem, PA; Atlanta, GA; Birmingham, AL; Boston, MA; Bridgeport, CT; Buffalo, NY; Charlotte, NC; Chattanooga, TN; Cincinnati, OH/KY; Davenport–Rock Island–Moline, IA/IL; Dayton, OH; Denver, CO; Detroit, MI; Flint, MI; Fresno, CA; Grand Rapids, MI; Hartford, CT; Kansas City MO/KS; Los Angeles, CA; Louisville, KY; Milwaukee, WI; Minneapolis–St. Paul, MN; Mobile, AL; Nashville, TN; New Haven, CT; New Orleans, LA; New York, NY/NJ; Newport News–Hampton, VA; Norfolk–Portsmouth, VA; Oakland, CA; Philadelphia, PA/NJ; Phoenix, AZ; Portland, OR; Providence–Pawtucket, RI/MA; Richmond, VA; Rochester, NY; Sacramento, CA; San Bernardino, CA; San Francisco, CA; San Jose, CA; Shreveport, LA; South Bend, IN; Springfield, MA; Toledo, OH; Trenton, NJ/PA; Tucson, AZ; Wilmington, DE; and Worcester, MA.

future if experience demonstrated that such action is appropriate.

15. LMCC argues in its Conditional Authority Petition that expansion of conditional authority to 470–512 MHz (T-Band), 800 MHz, and 900 MHz PLMR frequencies is now appropriate. It asserts that, over time, frequency assignments below 470 MHz have become more technically complex, whereas the rules governing the 800 and 900 MHz bands have become less technically complex. Thus, "in the opinion of LMCC, the rules governing frequency assignments in the bands below 470 MHz no longer provide a justification for distinguishing between below- and above-470 MHz for purposes of authorizing conditional licensing." It also states that recent experience with conditional licensing authority in the PLMR bands above 470 MHz pursuant to a temporary waiver supports the proposed rule change.

16. Commenters support extending the conditional licensing rules to applications filed with WTB and the Public Safety and Homeland Security Bureau (the Bureaus) for facilities above 470 MHz. We tentatively conclude that LMCC and the commenters are correct in asserting that expanding conditional authority will enable more applicants to meet pressing communications requirements without needing to seek special temporary authority, and will provide greater flexibility and earlier deployment of spectrum without compromising quality of service. Accordingly, we propose to amend section 90.159 to expand conditional authority to 800 MHz and 900 MHz I/B and Public Safety Pool frequencies, as well as section 1.931 of our rules to provide an appropriate cross-reference to such a rule amendment. We request comment on this tentative conclusion and our proposal, including its costs and benefits. In light of the Spectrum Act and the current T-Band freeze, we do not at this time propose to extend conditional licensing to T-Band frequencies.

17. While LMCC proposes to extend conditional authority to T-Band, 800 MHz, and 900 MHz I/B Pool and Public Safety Pool frequencies, neither it nor any commenter discusses whether conditional authority should apply to applicants for 769–775/799–805 MHz (700 MHz) Public Safety narrowband frequencies. We therefore seek comment on whether conditional authority should be expanded to the 700 MHz Public Safety narrowband spectrum, and what the associated costs and benefits of such an approach would be.

18. We also seek comment on how conditional licensing could affect public safety licensees operating in these bands and ask commenters to address, without limitation, the specific issues identified below, as well as information on related costs and benefits. Should applicants be required to obtain Regional Planning Committee concurrence for proposed facilities in the 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) band and in the 700 MHz band prior to conditional licensing? Does the mission-critical nature of public safety communications argue against allowing conditional licensing of public safety facilities that potentially would interfere with existing public safety communications systems?

19. Although Mobile Relay Associates (MRA) does not oppose extending conditional licensing to applications filed with the Bureaus for facilities above 470 MHz, MRA asserts that all Part 90 conditional licensing (both below and above 470 MHz) should be limited to unopposed applications and should be permitted only on a secondary, non-interfering basis. It states that it has encountered interference from stations operating pursuant to conditional authorization, which it argues reveals a flaw in the conditional licensing system. MRA, however, acknowledges that conditional authority functions properly "[i]n the vast majority of cases." While MRA observes that part 22 conditional authority has similar limitations to those it proposes, we note that part 22 applications, unlike part 90 applications eligible for conditional authority, do not require frequency coordination prior to being filed with the Commission. To the extent that part 90 conditional authority functions properly without the limitations suggested by MRA, we do not believe that the possibility of discrete incidents of interference warrants imposing those limitations upon all applicants.

20. MRA also argues that a conditionally authorized applicant should be required to discontinue operation upon the filing of a petition to deny or informal objection supported by a declaration under penalty of perjury. We note that section 90.159(d) provides that conditional authorization does not prejudice any action the Commission may take on the subject application. Thus, the Commission has discretion to modify or cancel such conditional authority at any time without a right to a hearing; and the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application.

21. Nonetheless, we seek comment on MRA's proposal that all part 90 conditional licensing be granted on a secondary basis and limited to applications that are unopposed, and that a conditionally authorized applicant must discontinue operation upon the filing of a petition to deny or informal objection supported by a declaration under penalty of perjury. Commenters should discuss whether, regardless of whether any new limitations on conditional authority are imposed, section 90.159(d) should be amended to better address MRA's concerns, and the costs and benefits of such action. For example, we seek comment on MRA's request that the Commission amend the rule to reiterate that conditional licensing is only for six months and that if the application remains pending at the end of six months, the pending applicant must then discontinue operation and await the processing of its application.

22. Fixed use of frequencies in the 450–470 MHz band generally is permitted on a secondary basis to land mobile operations, but section 90.261(f) excludes certain frequencies in order to reserve them for other specialized uses. Among the excluded frequencies are railroad frequencies at 452/457.925 MHz to 452/457.96875 MHz.

23. A signal booster is a device at a fixed location that automatically receives, amplifies, and retransmits on a one-way or two-way basis the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorized bandwidth. In order to reduce the potential for interference to other users, section 90.219(f)(3) limits the radiated power of each retransmitted channel to five watts effective radiated power (ERP).

24. In 2014, the Division granted in part a request of the Association of American Railroads (AAR) for waiver of sections 90.219(d)(3) and 90.261(f) concerning use of signal boosters to maintain communications between the front and rear of trains. Specifically, the Division permitted use of fixed location trackside signal boosters with up to 30 watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where coverage is unsatisfactory due to distance or intervening terrain barriers. The Division concluded that the purpose of the fixed use restriction in the subject rules would not be served by applying them strictly to trackside signal boosters, because the rules operate to protect railroad operations, and grant of the waiver would further support railroad operations. In order to address concerns about interference to non-railroad frequencies, the Division

excluded the channel pairs at the edge of frequencies coordinated by AAR (452/457.9000 MHz and 452/457.96875 MHz), and required the use of single-channel Class A signal boosters.

25. We propose to amend sections 90.219(d)(3) and 90.261(f) to codify the terms of the waiver. We propose to authorize railroad licensees to use single-channel Class A signal boosters with up to 30 watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where communications between the front and rear of trains is unsatisfactory due to distance or intervening terrain barriers. We seek comment on this proposal. We also ask commenters to address whether we should permit such operations on the outermost railroad channels (452/457.9000 MHz and 452/457.96875 MHz) and whether it is necessary to require the use of single-channel Class A signal boosters. We also seek comment on the costs and benefits of these proposals.

26. As part of the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems, the Commission created the Expansion (815–816/860–861 MHz) and Guard (816–817/861–862 MHz) Bands in order to provide spectral separation between commercial licensees operating Enhanced Specialized Mobile Radio systems above 817/862 MHz and public safety licensees operating below 815/860 MHz. Expansion Band (EB) spectrum is designated mostly for Specialized Mobile Radio (SMR) stations, with the remainder for Business/Industrial/Land Transportation (B/ILT) Pool eligible. EB users also include Public Safety licensees that chose not to relocate out of the band. Guard Band (GB) spectrum is in the General Pool, and thus is available for Public Safety, B/ILT, and SMR operations. EB/GB channels become available for licensing when the Bureaus announce that the required level of clearing has been achieved in that NPSPAC region.

27. The LMCC EB/GB Petition proposes that the Commission modify its rules to provide a 6-month window for incumbent 800 MHz licensees in a market to acquire EB/GB channels to expand existing systems before accepting applications from new entrants. LMCC states that expansion spectrum for incumbent 800 MHz systems in urban areas is urgently needed but sparsely available. It argues that a limited opportunity for expansion of incumbent systems would serve the public interest because those licensees had to undergo the disruptive rebanding process without deriving any economic benefit, and use of the EB/GB frequencies to expand the capacity of existing systems would promote spectral efficiency.

28. Commenters are split regarding this LMCC proposal. PLMR frequency coordinators support it. They argue that affording incumbents temporary exclusivity will allow them to address existing needs that have been growing during the rebanding process. They also argue that such priority will encourage existing licensees to upgrade to more efficient systems because the cost will be spread over a larger number of channels. Most commenters—generally prospective applicants for SMR channels in regions where EB/GB spectrum has not yet been made available—oppose the proposal. They argue that giving priority to incumbent operators would effectively bar new entrants, and particularly small businesses, in areas of high spectrum demand. They also dispute LMCC's assumption that new entrants are less likely than incumbents to place spectrum into operation efficiently and expeditiously.

29. We propose to adopt the LMCC proposal in part. Specifically, we propose to provide a window for incumbent 800 MHz licensees in the market to acquire or expand coverage and improve their quality of service on EB B/ILT Pool channels before accepting applications from new entrants. We also propose to provide this window to Public Safety licensees that elected to remain in the Expansion Band so that they may expand coverage on their existing EB channels. Incumbent 800 MHz licensees already have deployed facilities and demonstrated a commitment to utilizing the band in a given market and are unlikely to acquire spectrum for other than operational purposes and can be expected to put additional channels into service promptly to meet existing operational needs. Moreover, although some commenters point out that a filing window for incumbent 800 MHz licensees might lessen the spectrum available to new entrants in spectrum-constrained markets, a new entrant's ability to establish a new system in a constrained market could be limited. We also note that the membership of LMCC, the proponent of this rule change, includes all of the part 90 frequency coordinators. We tentatively agree with them that an incumbent preference would be the most effective way to distribute these EB channels among present and future B/ILT users.

30. LMCC suggests 6 months as a reasonable window. We seek comment on whether, given the pressing need and likely prompt deployment, we should provide a shorter window, such as 3 months. We also ask commenters to address whether any limits on this priority should be imposed in order to preserve the availability of channels for new licensees. In addition, we ask commenters to address the costs and benefits of the above-described approach for facilitating 800 MHz B/ILT and Public Safety licensees' opportunities to acquire channels or expand coverage.

31. Although we have tentatively concluded that a window is appropriate for EB B/ILT Pool channels, we tentatively conclude that the LMCC proposal for incumbent priority is not appropriate with respect to EB SMR channels. Unlike B/ILT licensees, SMR licensees compete for customers in the commercial wireless marketplace. Therefore, both incumbents and new licensees have similar economic motives to utilize the spectrum in a timely manner, and new entrants may have an even greater interest in deploying new or innovative services. On this basis, we do not believe that incumbents should be given priority over new entrants for these channels. We seek comment on this tentative conclusion. Commenters should explain whether incumbent priority is appropriate under these circumstances, and the related costs and benefits.

32. We also seek comment on whether we should provide a window for 800 MHz licensees in a market to acquire, or expand coverage on, GB channels, as well as the related costs and benefits. As noted above, GB spectrum is in the General Pool, in which eligible users include non-cellular SMR and Public Safety entities as well as B/ILT eligibles. As noted above, it is not at all clear that preferring incumbent 800 MHz SMR licensees over potential competitors would further the public interest. Commenters should address whether these concerns outweigh the benefits noted above of affording priority to incumbent B/ILT licensees, and whether those benefits apply equally to incumbent Public Safety licensees.

33. Finally, we seek comment on how we should implement a decision to provide a period of incumbent exclusivity for any EB/GB channels. The Commission established the procedure for making EB/GB channels available for licensing in the 800 MHz rebanding proceeding, but never codified it. We seek comment on whether the procedure should be codified (as revised in this proceeding to provide priority for incumbents), or whether we should, without any rule change, simply announce a modification to the procedure that the Commission set forth

in the 800 MHz proceeding. Commenters may also suggest other means of implementing a period of incumbent exclusivity. Those supporting codification should provide suggested rule language.

34. The proposed rule changes discussed in this Notice of Proposed Rulemaking are intended to expand access to PLMR spectrum. We welcome the industry's assistance in eliminating unnecessary impediments to the most efficient use of this scarce resource.

II. Procedural Matters

A. Ex Parte Presentations

35. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule section 1.1206(b). In proceedings governed by rule section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system ("ECFS") available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements

36. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

37. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document.

38. Interested parties may find authority for the actions proposed in this NPRM in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), as well as section 1.407 of the Commission's rules, 47 CFR 1.407.

III. Initial Regulatory Flexibility Certification

39. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes we propose in this FNPRM.

40. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. According to the Commission's records, there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by this NPRM. Despite the lack of specific information, however, the Commission believes that a substantial number of PLMR licensees may be small entities.

41. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. There are nine frequency coordinators certified by the Commission to coordinate frequencies allocated for public safety use. The Commission has not developed a small business size standard specifically applicable to frequency coordinators. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. Under this category and size standard, we estimate that a majority of frequency coordinators can be considered small.

42. The Census Bureau defines the category of Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2011, there were a total of 809 establishments in this category that operated for part or all of the entire year. According to Census bureau data for 2011, there were a total of 939 firms in this category that operated for the entire year. Of this total, 784 had less than 500 employees and 12 had 1000 or more employees. Thus, under that size standard, the majority of firms can be considered small.

43. The proposed rule changes discussed in this Notice of Proposed Rulemaking are intended to expand access to PLMR spectrum, using existing licensing mechanisms. Because this simply gives licensees new options for spectrum to use, but does not impose a new burden, licensees, frequency coordinators, and manufacturers should not incur new costs.

44. We believe that the rule changes discussed in this Notice of Proposed

Rulemaking will promote flexibility and more efficient use of the spectrum, reduce administrative burdens on both the Commission and licensees, and allow licensees to better meet their communications needs.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 90

Radio.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Section 1.931 is amended by revising paragraph (b)(11) to read as follows:

§ 1.931 Application for special temporary authority.

* * * * *

(b) * * *

(11) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band (other than a commercial radio service applicant or licensee on these bands) or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with § 90.175 of this chapter. Operation under such a permit is evidenced by the properly executed Form 601 with certifications that satisfy the requirements of § 90.159(b).

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 4. Section 90.35 is amended by:

■ a. Amending paragraph (b)(3) by revising entries for 153.0425, 153.0575, 153.0725, 153.0875, 153.1025, 153.1175, 153.1325, 153.1475, 153.1625, 153.1775, 153.1925, 153.2075, 153.2225, 153.2375, 153.2525, 153.2675, 153.2825, 153.2975, 153.3125, 153.3275, 153.3425, 153.3575, 153.3725, 153.3875, and 153.4025, and adding entries for 451.00625, 451.0125, 456.00625, 456.0125, 462.5375, 462.7375, 467.5375, and 467.7375,

■ b. Revising paragraph (c)(2),

■ c. Amending paragraph (c)(61)(iv) by adding entries for Kahului, HI, and Kailula-Kona, HI, and revising the entry for Boeing/King County Int'l (BFI), and

■ d. Revising paragraph (c)(63).

The revisions and additions read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) *Frequencies.*

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * *	*	*	*
153.0425	do	30	IP
* * * *	*	*	*
153.0575	do	4, 7, 30	IP
* * * *	*	*	*
153.0725	do	30	IP
* * * *	*	*	*
153.0875	do	4, 7, 30	IP
* * * *	*	*	*
153.1025	do	30, 80	IP
* * * *	*	*	*
153.1175	do	4, 7, 30	IP
* * * *	*	*	*
153.1325	do	30	IP
* * * *	*	*	*
153.1475	do	4, 7, 30	IP
* * * *	*	*	*
153.1625	do	30	IP
* * * *	*	*	*
153.1775	do	4, 7, 30	IP

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * *	*	*	*
153.1925	......do	30	IP
* * * *	*	*	*
153.2075	......do	4, 7, 30	IP
* * * *	*	*	*
153.2225	......do	30	IP
* * * *	*	*	*
153.2375	......do	4, 7, 30	IP
* * * *	*	*	*
153.2525	......do	30	IP
* * * *	*	*	*
153.2675	......do	4, 7, 30	IP
* * * *	*	*	*
153.2825	......do	30	IP
* * * *	*	*	*
153.2975	......do	4, 7, 30	IP
* * * *	*	*	*
153.3125	......do	30	IP
* * * *	*	*	*
153.3275	......do	4, 7, 30	IP
* * * *	*	*	*
153.3425	......do	30	IP
* * * *	*	*	*
153.3575	......do	4, 7, 30	IP
* * * *	*	*	*
153.3725	......do	30	IP
* * * *	*	*	*
153.3875	......do	30	IP
* * * *	*	*	*
153.4025	......do	30	IP
* * * *	*	*	*
451.00625	Base or mobile	33	
451.0125	......do	33	
* * * *	*	*	*
456.00625	......do	33	
456.0125	......do	33	
* * * *	*	*	*
462.5375	......do	2	
462.7375	......do	2	
* * * *	*	*	*
467.5375	......do	2	
467.7375	......do	2	
* * * *	*	*	*

(c) * * *

(2) This frequency will be assigned with an authorized bandwidth not to exceed 4 kHz.

* * * * *

(61) * * *

(iv) * * *

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
* * * * *	*	*
Kahului, HI: Kahului (OGG)	20°53′55.4″	156°25′48.9″
Kailula-Kona, HI: Ke-Ahole (KOA)	19°43′57.3″	156°24′56.0″
* * * * *	*	*
Seattle, WA: Boeing/King County Int'l (BFI)	47°31′48.4″	122°18′07.4″
* * * * *	*	*

* * * * *

(63) Within the boundaries of the urbanized areas listed below, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Industrial/Business Pool may be licensed on this frequency only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urban areas. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." This limitation applies to the following urbanized areas: Albany–Troy–Schenectady, NY; Allentown–Bethlehem, PA; Atlanta, GA; Birmingham, AL; Boston, MA; Bridgeport, CT; Buffalo, NY; Charlotte, NC; Chattanooga, TN; Cincinnati, OH/KY; Davenport–Rock Island–Moline, IA/IL; Dayton, OH; Denver, CO; Detroit, MI; Flint, MI; Fresno, CA; Grand Rapids, MI; Hartford, CT; Kansas City MO/KS; Los Angeles, CA; Louisville, KY; Milwaukee, WI; Minneapolis–St. Paul, MN; Mobile, AL; Nashville, TN; New Haven, CT; New Orleans, LA; New York, NY/NJ; Newport News–Hampton, VA; Norfolk–Portsmouth, VA; Oakland, CA; Philadelphia, PA/NJ; Phoenix, AZ; Portland, OR; Providence–Pawtucket, RI/MA; Richmond, VA; Rochester, NY; Sacramento, CA; San Bernardino, CA; San Francisco, CA; San Jose, CA; Shreveport, LA; South Bend, IN; Springfield, MA; Toledo, OH; Trenton, NJ/PA; Tucson, AZ; Wilmington, DE; and Worcester, MA.

* * * * *

■ 5. Section 90.159 is amended by revising paragraphs (b), (b)(1), and (c) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) An applicant proposing to operate a new land mobile radio station or modify an existing station below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band (other than a commercial radio service applicant or licensee on these bands) that is required to submit a frequency coordination recommendation pursuant to paragraphs (b) through (h) of § 90.175 of this part may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part if the application is accompanied by evidence of frequency coordination in accordance with § 90.175 of this part and provided that the following conditions are satisfied:

(1) The proposed station location is west of Line C as defined in § 90.7, and (for applicants proposing to operate below 470 MHz or in the 806–824/851–866 MHz band or the 896–901/935–940 MHz band) south of Line A as defined in § 90.7.

* * * * *

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control for an existing station below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band (other than a commercial radio service applicant or licensee on these bands) may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part. Conditional authority ceases immediately if the application is dismissed by the Commission. All other categories of applications listed in § 90.175 of this part that do not require evidence of frequency coordination are excluded from the provisions of this section.

* * * * *

■ 6. Section 90.219 is amended by revising paragraph (d)(3) to read as follows:

§ 90.219 Use of signal boosters.

* * * * *

(d) * * *

(3)(i) Except as set forth in paragraph (d)(3)(ii) of this section, signal boosters must be deployed such that the radiated power of each retransmitted channel, on the forward link and on the reverse link, does not exceed 5 Watts effective radiated power (ERP).

(ii) Railroad licensees may operate Class A signal boosters transmitting on a single channel with up to 30 Watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where communications between the front and rear of trains is unsatisfactory due to distance or intervening terrain barriers.

* * * * *

■ 7. Section 90.261 is amended by revising paragraph (f) introductory text to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operations.

* * * * *

(f) Secondary fixed operations pursuant to paragraph (a) of this section will not be authorized on the following frequencies or on frequencies subject to

§ 90.267, except as provided in § 90.219(d)(3)(ii):

* * * * *

[FR Doc. 2016–21638 Filed 9–22–16; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 215, 219, 242, and 252

[Docket DARS–2016–0027]

RIN 0750–AJ00

Defense Federal Acquisition Regulation Supplement: Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015 and a section of the National Defense Authorization Act for Fiscal Year 2016, both of which provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 22, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2015–D013, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for "DFARS Case 2015–D013." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2015–D013" on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2015–D013 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer Johnson, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 872 of the NDAA for FY 2016, both of which revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. Section 821 of the NDAA for FY 2015 provides for contractors participating in the Test Program to report, on a semiannual basis, the amount of first-tier subcontract dollars awarded; the total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan under 15 U.S.C. 637(d); costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans; and costs avoided by adoption of a comprehensive subcontracting plan. This information is expected to assist in determining if Test Program participants have achieved cost savings while enhancing opportunities for small businesses.

In addition, section 821—

- Repeals section 402 of Public Law 101–574, which suspended liquidated damages under comprehensive small business subcontracting plans;
- Requires consideration, as part of the past performance evaluation of an offeror, of any failure to make a good faith effort to comply with its comprehensive subcontracting plan;
- Extends the Test Program through December 31, 2017;
- Increases the threshold for participation in the Test Program from $5,000,000 to $100,000,000; and
- Prohibits negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

Section 872 of the NDAA for FY 2016 removes the prohibition on negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

II. Discussion and Analysis

This rule proposes to amend DFARS subparts 211.5, 215.3, 219.7, 242.15, and 252.2 as summarized in the following paragraphs:

A. Subpart 211.5, Liquidated Damages

Section 211.500 is added to clarify that subpart 211.5 and Federal Acquisition Regulation (FAR) subpart 11.5 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program, and to include a reference to DFARS 219.702–70.

B. Subpart 215.3, Source Selection

Section 215.305 is amended to require contracting officers to consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan as part of the past performance evaluation.

C. Subpart 219.7, The Small Business Subcontracting Program

- Section 219.702–70, Statutory requirements for the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, renumbers section 219.702 and incorporates new requirements stemming from section 821 of the NDAA for FY 2015.
  - ○ Paragraph (1) is renumbered as paragraph (a) and amended to include the title of the Test Program.
  - ○ Paragraph (2), which addressed the nonapplicability of liquidated damages, is deleted in its entirety.
  - ○ Paragraph (b) is added to provide the current requirements for participation in the Test Program. These requirements are expressly stated in 15 U.S.C. 637 note, as amended by section 821 of the NDAA for FY 2015 and section 872 of the NDAA for FY 2016. To participate in the Test Program, the contractor must have furnished to DoD, during the immediately preceding fiscal year under at least three contracts, supplies, services, or construction in the aggregate amount of at least $100 million.
  - ○ Paragraph (c) is added to describe the establishment and use of comprehensive subcontracting plans.
  - ○ Paragraph (d) is added to provide the process to determine the need to assess liquidated damages for failure to make a good faith effort to comply with the comprehensive subcontracting plan. Paragraph (e) is added to describe the calculation and application of liquidated damages. This rule sets forth the following methodology for assessing liquidated damages:

- The participant contractor shall be subject to the payment of liquidated damages if, after allowing the contractor an opportunity to demonstrate that it has made a good faith effort to comply with its comprehensive subcontracting plan, the contracting officer makes a final decision that the contractor failed to make a good faith effort to comply with its plan.

- The amount of liquidated damages owed to the Government shall be the amount of anticipated damages sustained by the Government, including but not limited to additional expenses of administration, reporting, and contract monitoring.
  - ○ Paragraph (3) is renumbered as paragraph (f) and amended to revise the expiration date for the Test Program from December 31, 2014, to December 31, 2017.
- Section 219.708, Contract Clauses, is amended as follows:
  - ○ Paragraph (b)(1)(B) guidance on use of clause 252.219–7004 is updated and aligned with the revised flowdown instructions in paragraph (g) of the clause. A correction is made to the Code of Federal Regulations to remove the phrase "and FAR 52.219–9, Small Business Subcontracting Plan(DoD Contracts),". Paragraph (b)(1)(B)(*2*)(*ii*) is removed as the information is now contained at FAR 19.708(b)(1)(iii).
  - ○ Paragraph (b)(2), is amended to instruct contracting officers to use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), in lieu of FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

D. Subpart 242.15, Contractor Performance Information

Section 242.1502 is added to require that past performance evaluations include an assessment of the contractor's performance against, and efforts to achieve, the goals in its comprehensive subcontracting plan.

E. Subpart 252.2, Text of Provisions and Clauses

- Clause 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), basic clause and its Alternate I, are amended to advise that contractors must insert (*i.e.*, "flow down") the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), to subcontractors who participate in the Test Program.
- Clause 252.219–7004, Small Business Subcontracting Plan (Test Program), is amended to incorporate new requirements stemming from section 821 of the NDAA for FY 2015.
  - ○ Paragraph (a) provides definitions for additional terms used in connection with the Test Program.
  - ○ Paragraph (c) is amended to advise participant contractors of the requirements for participation in the Test Program.
  - ○ Paragraph (d) is amended to include the reporting requirements for contractors with comprehensive subcontracting plans. The reports must present the data by North American Industry Classification System code, by major defense acquisition program, by contract (for certain contracts with a value exceeding $100,000,000), and by military department.
  - ○ Paragraph (f) is added to address liquidated damages under a comprehensive subcontracting plan.
  - ○ Paragraph (g) flowdown instructions are clarified and updated.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to amend the clauses at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and 252.219–7004, Small Business Subcontracting Plan (Test Program), in order to implement section 821 of the NDAA for FY 2015. The requirements of section 821 were enacted to promote utilization of small businesses and to determine the success of the Test Program at reducing administrative burdens while enhancing subcontracting opportunities for small businesses. Section 821 advances the interests of small business subcontractors by encouraging test program participants to comply with their comprehensive subcontracting plans.

A. Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold (SAT). It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Procurement and Acquisition Policy (DPAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Contracts for the Acquisition of Commercial Items, Including Commercially Available Off the Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to commercially available off-the-shelf (COTS) items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Applicability Determination

This proposed rule does not apply the requirements of section 821 of the NDAA for FY 2015 to contracts at or below the SAT, but does apply the requirements of section 821 to contracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101.

The prescriptions for these clauses currently require their use in solicitations and contracts for commercial items, including COTS items. This rule merely revises these clauses to implement the new requirements of section 821; consequently, exclusion of acquisitions of commercial and COTS items from these requirements would create confusion among contractors and the contracting workforce and would result in fewer subcontracting opportunities for small businesses. By applying the requirements of section 821 to acquisitions of commercial items, the burden on contractors is no greater than the burden on contractors who have other types of subcontracting plans. DoD will make the final determination with regard to application to commercial items after receipt and analysis of public comments.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small entities do not participate in the Test Program. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291) and section 872 of the NDAA for FY 2016 (Pub. L. 114–92). Section 821 of the NDAA for FY 2015 provides several changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (Test Program), including new reporting and eligibility requirements, an extension of the Test Program, and authority to assess liquidated damages. Section 872 of the NDAA for FY 2016 removes one of the eligibility requirements.

The objectives of this proposed rule are to collect data to assist in assessing the successes or shortcomings of the Test Program and to provide the means to hold Test Program participants accountable for failure to make a good faith effort to comply with their comprehensive subcontracting plans. The authorizing legislation is section 821 of the NDAA for FY 2015 and section 872 of the NDAA for FY 2016.

The rule will not apply to small entities. The rule, however, may have an indirect positive economic impact on small entities, because the rule encourages Test Program participants to make a good faith effort to comply with their comprehensive subcontracting plans.

The rule does not impose any reporting or recordkeeping requirements on small entities. There are new semiannual reporting requirements for Test Program participants who are, as a matter of eligibility for the program, other than small businesses.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known, significant, alternative approaches to the rule that would meet the requirements of the applicable statutes.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D013), in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35), because the rule does not impose a collection of information on ten or more members of the public.

List of Subjects in 48 CFR Parts 211, 215, 219, 242, and 252.

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 215, 219, 242, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 211, 215, 219, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Add section 211.500 to read as follows:

211.500 Scope.

This subpart and FAR subpart 11.5 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. See 219.702–70 for coverage of liquidated damages for comprehensive subcontracting plans.

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.305(a)(2) by—

■ a. Designating the text as paragraph (a)(2)(A); and

■ b. Adding paragraph (a)(2)(B).

The addition reads as follows:

215.305 Proposal evaluation.

(a)(2) * * *

(B) Contracting officers shall consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at 219.702–70 as part of the evaluation of the past performance.

PART 219—SMALL BUSINESS PROGRAMS

219.702 [Redesignated as 219.702–70]

■ 4. Redesignate section 219.702 as 219.702–70; and revise it to read as follows:

219.702–70 Statutory requirements for the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

(a) In accordance with 15 U.S.C. 637 note, DoD has established a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns. This program is referred to as the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (Test Program).

(b) *Eligibility requirements.* To become and remain eligible to participate in the Test Program, a business concern is required to have furnished supplies or services (including construction) under at least three DoD contracts during the preceding fiscal year, having an aggregate value of at least $100 million.

(c) *Comprehensive subcontracting plans.* (1) The Defense Contract Management Agency will designate the contracting officer who shall negotiate and approve comprehensive subcontracting plans with eligible participants on an annual basis.

(2) Test Program participants use their comprehensive subcontracting plans, in lieu of individual subcontracting plans, when performing any DoD contract or subcontract that requires a subcontracting plan.

(d) *Assessment.* The contracting officer designated to manage the comprehensive subcontracting plan shall conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable. The contracting officer shall compare the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the comprehensive subcontracting plan.

(1) If the contractor has failed to meet its approved subcontracting goal(s), the contracting officer shall give the contractor written notice specifying the failure, advising of the potential for assessment of liquidated damages, permitting the contractor to demonstrate what good faith efforts have been made, and providing a period of 15 working days (or longer period at the contracting officer's discretion) within which to respond. The contracting officer may take the contractor's failure to respond to the notice as an admission that no valid explanation exists.

(2) The contracting officer shall review all available information to determine whether the contractor has failed to make a good faith effort to comply with the plan.

(3) If, after consideration of all relevant information, the contracting officer determines that the contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the contracting officer shall issue a final decision. The contracting officer's final decision shall include the right of the contractor to appeal under the Disputes clause. The contracting officer shall distribute a copy of the final decision to all cognizant contracting officers for the contracts covered under the plan.

(e) *Liquidated damages.* The amount of liquidated damages shall be the amount of anticipated damages sustained by the Government, including but not limited to additional expenses of administration, reporting, and contract monitoring, and shall be identified in the comprehensive subcontracting plan. Liquidated damages shall be in addition to any other remedies the Government may have.

(f) *Expiration date.* The Test Program expires on December 31, 2017.

■ 5. Amend section 219.708 by—

■ a. Revising paragraph (b)(1)(B);

■ b. Revising paragraph (b)(2); and

■ c. Removing from paragraph (c)(1) "test program described in 219.702" and adding "Test Program described in 219.702–70" in its place.

The revisions read as follows:

219.708 Contract clauses.

(b)(1) * * *

(B) In contracts with contractors that have comprehensive subcontracting plans approved under the Test Program described in 219.702–70, including contracts using FAR part 12 procedures for the acquisition of commercial items, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), FAR 52.219–9, Small Business Subcontracting Plan, and FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

(2) In contracts with contractors that have comprehensive subcontracting plans approved under the Test Program described in 219.702–70, do not use the clause at FAR 52.219–16, Liquidated Damages—Subcontracting Plan.

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 6. Add subpart 242.15, consisting of 242.1502, to read as follows:

Subpart 242.15—Contractor Performance Information

242.1502 Policy.

(g) Past performance evaluations in the Contractor Performance Assessment Reporting System shall include an assessment of the contractor's performance against, and efforts to achieve, the goals identified in its comprehensive small business subcontracting plan when the contract contains the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.219–7003 by—

■ a. In the basic clause—

■ i. Removing the clause date of "(MAR 2016)" and adding "(DATE)" in its place;

■ ii. Adding paragraph (g); and

■ b. In Alternate I—

■ i. Removing the clause date of "(MAR 2016)" and adding "(DATE)" in its place; and

■ ii. Adding paragraph (g).

The additions read as follows.

252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

* * * * *

(g) Include the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, where the subcontract is expected to exceed $700,000 ($1.5 million for construction of any public facility) and to have further subcontracting opportunities.

* * * * *

Alternate I. * * *

* * * * *

(g) Include the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, where the subcontract is expected to exceed $700,000 ($1.5 million for construction of any public facility) and to have further subcontracting opportunities.

* * * * *

■ 8. Revise section 252.219–7004 to read as follows:

252.219–7004 Small business subcontracting plan (Test Program).

As prescribed in 219.708(b)(1)(B), use the following clause:

Small Business Subcontracting Plan (Test Program) (Date)

(a) *Definitions.* As used in this clause—

Covered small business concern means a small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, women-owned small business concern, or small disadvantaged business concern as these terms are defined in FAR 2.101.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, Web-based system for small business subcontracting program reporting. The eSRS is located at *http://www.esrs.gov.*

Failure to make a good faith effort to comply with a comprehensive subcontracting plan means a willful or intentional failure to perform in accordance with the requirements of the Contractor's approved comprehensive subcontracting plan or willful or intentional action to frustrate the plan.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the Test Program of 15 U.S.C. 637 note, as amended, shall be included in and made a part of this contract. Upon expulsion from the Test Program or expiration of the Test Program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of 15 U.S.C. 637(d).

(c) *Eligibility requirements.* To become and remain eligible to participate in the Test Program, a business concern is required to have furnished supplies or services (including construction) under at least three DoD contracts during the preceding fiscal year, having an aggregate value of at least $100 million.

(d) *Reports.* (1) The Contractor shall report semiannually for the six-month periods ending March 31 and September 30, the information in paragraphs (d)(1)(i) through (v) of this section within 30 days after the end of the reporting period. Submit the report at *https://www.esrs.gov.*

(i) A list of contracts covered under its comprehensive small business subcontracting plan, to include the Commercial and Government Entity (CAGE) code and Data Universal Numbering System (DUNS) number.

(ii) The amount of first-tier subcontract dollars awarded during the six-month period covered by the report to covered small business concerns, with the information set forth separately by—

(A) North American Industrial Classification System (NAICS) code;

(B) Major defense acquisition program, as defined in 10 U.S.C. 2430(a);

(C) Contract number, if the contract is for maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment, and the total value of the contract, including options, exceeds $100 million; and

(D) Military department.

(iii) Total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan.

(iv) Costs incurred in negotiating, complying with, and reporting on its comprehensive subcontracting plan.

(v) Costs avoided through the use of a comprehensive subcontracting plan.

(2) The Contractor shall—

(i) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(ii) Provide its contract number, its DUNS number, and the email address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(iii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the email address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.

(iv) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(3) The Contractor shall submit SSRs using eSRS at *http://www.esrs.gov.* The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from a member firm of the Alaska Native—Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(i) This report may be submitted on a corporate, company, or subdivision (*e.g.,* plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(ii) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(iii) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(iv) The authority to acknowledge receipt or reject the SSR resides with the Defense Contract Management Agency.

(e) The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled "Utilization of Small Business Concerns," or an approved plan required by this clause, shall be a material breach of the contract.

(f) *Liquidated damages.* The Contracting Officer designated to manage the comprehensive subcontracting plan will exercise the functions of the Contracting Officer, as identified in paragraphs (f)(1) through (4), on behalf of all DoD departments and agencies that awarded contracts covered by the Contractor's comprehensive subcontracting plan.

(1) To determine the need for liquidated damages, the Contracting Officer will conduct a compliance review during the fiscal year after the close of the fiscal year for which the plan is applicable. The Contracting Officer will compare the approved percentage or dollar goals to the total, actual subcontracting dollars covered by the plan.

(2) If the Contractor has failed to meet its approved subcontracting goal(s), the Contracting Officer will provide the Contractor written notice specifying the failure, advising of the potential for assessment of liquidated damages, and permitting the Contractor to demonstrate what good faith efforts have been made. The Contracting Officer may take the Contractor's failure to respond to the notice within 15 working days (or longer period at the Contracting Officer's discretion) as an admission that no valid explanation exists.

(3) If, after consideration of all relevant information, the Contracting Officer determines that the Contractor failed to make a good faith effort to comply with the comprehensive subcontracting plan, the Contracting Officer will issue a final decision to the Contractor to that effect and require the Contractor to pay liquidated damages to the Government in the amount identified in the comprehensive subcontracting plan.

(4) The Contractor shall have the right of appeal under the clause in this contract entitled "Disputes" from any final decision of the Contracting Officer.

(g) The Contractor shall include in subcontracts that offer subcontracting opportunities, are expected to exceed $700,000 ($1.5 million for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns—

(1) FAR 52.219–9, Small Business Subcontracting Plan, and 252.219–7003 Small Business Subcontracting Plan (DoD Contracts)—Basic;

(2) 52.219–9, Small Business Subcontracting Plan, with its Alternate III, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—Alternate I, to allow for submission of SF 294s in lieu of ISRs; or

(3) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70.

(End of clause)

[FR Doc. 2016–22573 Filed 9–22–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219 and Appendix I to Chapter 2

[Docket DARS–2016–0033]

RIN 0750–AJ05

Defense Federal Acquisition Regulation Supplement: Amendment to Mentor-Protégé Program (DFARS Case 2016–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that provides amendments to the DoD Pilot Mentor-Protégé Program.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 22, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D011, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for

"DFARS Case 2016–D011." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2016–D011" on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2016–D011 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer Johnson, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 861 provides several amendments to the DoD Pilot Mentor-Protégé Program ("the Program"). In particular, section 861 provides for contractors who participate in the Program as mentors to report all technical or management assistance provided; any new awards of subcontracts to the protégé firm, including the value of such subcontracts; any extensions, increases in the scope of work, or additional, unreported payments to the protégé firm; the amount of any progress payments or advance payments made to the protégé firm for performance under any subcontract made under the Program; any loans made to the protégé firm; all Federal contracts awarded to the mentor and protégé firms as a joint venture; any assistance the mentor firm obtained for the protégé firm from small business development centers established under 15 U.S.C. 648, entities providing procurement technical assistance under 10 U.S.C. chapter 142, or historically Black colleges or universities or minority institutions of higher education; whether the terms of the mentor-protégé agreement have changed; and a narrative describing the success assistance provided under the Program has had in addressing the protégé firm's developmental needs, the impact on DoD contracts, and addressing any problems encountered. These reporting requirements apply retroactively to mentor-protégé agreements in effect on November 25, 2015, date of enactment of the NDAA for FY 2016. The new reporting requirements will provide information to DoD's Office of Small Business Programs to support decisions regarding continuation of particular mentor-protégé agreements.

In addition, section 861—

- Adds new eligibility criteria;
- Limits the number of mentor-protégé agreements to which a protégé firm may be a party;
- Limits the period of time during which a protégé firm may participate in mentor-protégé agreements under the Program;
- Adds new elements to mentor-protégé agreements addressing the benefits of the agreement to DoD and goals for additional awards for which the protégé firm can compete outside the Program;
- Removes business development assistance using mentor firm personnel and cash in exchange for an ownership interest in the protégé firm from the types of assistance that a mentor firm may provide to a protégé firm;
- Prohibits reimbursement of any fee assessed by the mentor firm for certain services provided to the protégé firm while participating in a joint venture with the protégé firm;
- Revises the definitions of the terms "small business concern" and "disadvantaged small business concern;"
- Adds definitions for "severely disabled individual" and "affiliated;" and
- Extends the Program for three years.

II. Discussion and Analysis

This rule proposes amendments to DFARS subpart 219.71 and Appendix I, and significant revisions are summarized in the following paragraphs:

A. Subpart 219.71, Pilot Mentor-Protégé Program

- 219.7102, General. This section is amended to replace the list of Program eligibility criteria with a reference to the eligibility criteria located in Appendix I, section I–102.
- 219.7104, Developmental assistance costs eligible for reimbursement or credit. This section is amended to revise the date by which a mentor firm must incur costs under the Program in order to be eligible for reimbursement or credit toward small business subcontracting goals.

B. Appendix I, Policy and Procedures for the DoD Pilot Mentor-Protégé Program

- I–100, Purpose. This section is amended to align more closely with the language in section 861 of the NDAA for FY 2016.
- I–101, Definitions. This section is amended to add the definition of "nontraditional defense contractor" provided in section 861, and to delete the definition of "historically Black college or university" that repeated the definition in FAR 2.101.
- I–102, Participant eligibility. This section is amended to revise the mentor and protégé eligibility criteria in accordance with section 861.
- I–103, Program duration. This section is amended to revise the date by which new mentor-protégé agreements may be submitted and approved and the date by which a mentor firm must incur costs under the Program in order to be eligible for reimbursement or credit toward subcontracting goals.
- I–104, Selection of protégé firms. This section is amended to encourage mentor firms to select firms as protégés that have not received significant prime contracts from a Federal agency. In addition, this section is amended to indicate the number of mentor-protégé agreements to which a protégé firm may be a party, and to implement the time limitation specified in section 861 for a protégé firm's participation in the Program.
- I–105, Mentor approval process. This section is amended to reflect the revised eligibility criteria.
- I–107, Elements of a mentor-protégé agreement. This section is amended to incorporate new requirements of section 861.
  - ○ New paragraph (e) is added to require assurances in mentor-protégé agreements that the mentor and protégé firms are not affiliated as defined in section 861. In addition, the existing paragraph (e) is renumbered as paragraph (f), and the existing paragraph (f) is renumbered as paragraph (g).
  - ○ New paragraphs (g)(3) and (4) are added to implement the section 861 requirement for mentor-protégé agreements to include the following:
    - ▪ A description of the quantitative and qualitative benefits to DoD from the agreement, if applicable; and
    - ▪ Goals for additional awards for which the protégé firm can compete outside the Program.
- I–109, Reimbursement agreements. This section is amended to implement the prohibition in section 861 of reimbursement of fees assessed by the mentor firm for certain services

provided to the protégé firm or reimbursement of business development expenses incurred by the mentor firm while participating in a joint venture with the protégé firm.

- I–112, Reporting requirements. This section is amended to include the new reporting requirements of section 861 and to specify that they apply retroactively in accordance with paragraph (b)(2) of section 861.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, which provides amendments to the DoD Pilot Mentor-Protégé Program ("the Program"). Specifically, section 861 requires mentor firms to report a variety of information on the assistance they have provided to their protégé firms, the success this assistance has had in addressing the protégé firm's developmental needs, the impact on DoD contracts, and addressing any problems encountered. The new reporting requirements apply retroactively to mentor-protégé agreements that were in effect on the date of enactment of the NDAA for FY 2016 (enacted November 25, 2015). In addition, section 861 adds new eligibility criteria for mentor and protégé firms; limits the period of time a protégé firm can participate in the Program; limits the number of mentor-protégé agreements to which a protégé can be a party; extends the Program for three years; and makes several other amendments.

The objectives of this rule are to implement statutory amendments to the Program and to provide DoD's Office of Small Business Programs with information to support decisions regarding continuation of particular mentor-protégé agreements. The legal basis for the amendments is section 861 of the NDAA for FY 2016.

The rule will apply to small entities that participate in the Program. There are currently 85 small entities participating in the Program as protégé firms and six small entities participating as mentors.

The rule imposes new reporting requirements on mentor firms, including mentors who are small businesses, regarding assistance they have provided to their protégé firms and the success this assistance has had. Although protégé firms are not required to submit these reports, the mentor firms will need to obtain supporting information from the protégé firms in order to ascertain the success of the assistance provided.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2016–D011), in correspondence.

VI. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB Control Number 0704–0332, Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, is currently in place for the DoD Mentor Protégé program. This proposed rule, DFARS Case 2016–D011, however, requires revision of OMB 0704–0332 to increase the burden hours to accommodate the increased reporting requirements resulting from this rule. Accordingly, DoD has submitted a request to OMB for approval of a revised information collection requirement as discussed below.

A. Public Reporting Burden for This Collection of Information is Estimated To Average Three Hours per Response, Including the Time for Reviewing Instructions, Searching Existing Data Sources, Gathering and Maintaining the Data Needed, and Completing and Reviewing the Collection of Information

The annual reporting burden is estimated as follows:

Respondents: 127.
Responses per respondent: 2 approximately.
Total annual responses: 255.
Preparation hours per response: 2 hours.
Total response Burden Hours: 595.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Ms. Jennifer Johnson, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition

Regulations System, Attn: Ms. Jennifer Johnson, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2016–D011 in the subject line of the message.

List of Subjects in 48 CFR Parts 219 and Appendix I to Chapter 2

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 and appendix I to chapter 2 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR part 219 and appendix I to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.7100 [Amended]

■ 2. Amend section 219.7100 by—

■ a. Removing "Section 831" and adding "section 831" in its place; and

■ b. Adding the phrase ", as amended through November 25, 2015" to the end of the first sentence.

■ 3. Amend section 219.7102 by—

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

The revision reads as follows:

219.7102 General.

* * * * *

(a) Mentor firms and protégé firms that meet the criteria in Appendix I, section I–102.

* * * * *

219.7103–2 [Amended]

■ 4. Amend section 219.7103–2, in paragraph (e)(3), by removing "219.7102(d)(1)(ii)" and adding "219.7102(c)(1)(ii)" in its place.

219.7104 [Amended]

■ 5. Amend section 219.7104 by—

■ a. In paragraph (b)—

■ i. Removing "Advance agreements are encouraged.";

■ ii. Removing "before October 1, 2018" and adding "not later than September 30, 2021" in its place; and

■ b. In paragraph (d), removing "before October 1, 2018" and adding "not later than September 30, 2021" in its place.

Appendix I to Chapter 2—Policy and Procedures for The DOD Pilot Mentor Protégé Program

■ 6. Amend appendix I to chapter 2 by—

■ a. In section I–100, revising paragraph (a);

■ b. Removing section I–101.1;

■ c. Redesignating section I–101.2 as section I–101.1;

■ d. Adding new section I–101.2;

■ e. Revising section I–101.4;

■ f. Removing section I–101.5;

■ g. Redesignating section I–101.6 as section I–101.5;

■ h. In the newly redesignated section I–101.5, removing "Section" and adding "section" in its place;

■ i. Removing section I–101–7;

■ j. Redesignating section I–101.8 as section I–101.6;

■ k. In section I–102, revising paragraphs (a), (b), (c), and (d);

■ l. Amend section I–103 by—

■ i. In paragraph (a), removing "September 30, 2015" and adding "September 30, 2018" in its place;

■ ii. In paragraph (b), removing "September 30, 2018" and adding "September 30, 2021" in its place;

■ m. Amend section I–104 by—

■ i. Revising paragraph (a);

■ ii. In paragraph (c), removing "as defined in I–101.5"'

■ iii. In paragraph (d) removing "I–107(f)" and adding "I–106(d)" in its place;

■ iv. Revising paragraph (e);

■ n. Amend section I–105 by—

■ i. Revising paragraph (b)(1);

■ ii. In paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), removing "company's" and "company" and adding "entity's" and "entity", respectively in each place they appear;

■ iii. Revising paragraph (b)(7);

■ iv. Revising paragraph (c);

■ o. Amend section I–106 by—

■ i. In paragraph (d)(1)(i), removing "business development, ";

■ ii. In paragraph (d)(1)(iii), adding "described in I–107(g)" to the end of the sentence;

■ iii. In paragraph (d)(2), removing "Award of subcontracts" and adding "Award of subcontracts to the protégé firm" in its place;

■ iv. Removing paragraph (d)(6);

■ v. Redesignating paragraph (d)(7) as (d)(6);

■ p. Amend section I–107 by—

■ i. In the introductory text, removing "will contain the following elements:" and adding "shall contain—" in its place;

■ ii. Revising paragraph (b);

■ iii. In paragraph (d), removing "I–102" and adding "I–102(a)" in its place;

■ iv. Revising paragraphs (e), (f), and (g);

■ q. Amend section I–109 by—

■ i. Redesignating paragraph (e) as paragraph (f);

■ ii. Adding new paragraph (e);

■ r. Amend section I–110.1, in paragraph (a), by removing "DoD Comprehensive Subcontracting Plan Test Program" and adding "DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans" in its place; and removing "entity employing the severely disabled" and adding "entity employing severely disabled individuals" in its place;

■ s. Amend section I–112.1 by—

■ i. In the section heading, removing "SF 294s" and adding "Standard Forms 294" in its place;

■ ii. In paragraph (b), removing "SDB" and adding "applicable" in its place; and removing "I–101.3 or I–101.5" and adding "I–102(b)" in its place;

■ t. Revise section I–112.2.

The revisions and additions read as follows:

I–100 Purpose.

(a) This Appendix I to 48 CFR chapter 2 implements the Pilot Mentor-Protégé Program (hereafter referred to as the "Program") established under section 831 of Public Law 101–510, the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note), as amended through November 25, 2015. The purpose of the Program is to provide incentives to major DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of eligible small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of such business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

* * * * *

I–101.2 Nontraditional defense contractor.

An entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement or transaction (10 U.S.C. 2302(9)).

* * * * *

I–101.4 Severely disabled individual.

An individual who is blind or severely disabled as defined in 41 U.S.C. 8501.

* * * * *

I–102 Participant eligibility.

(a) To be eligible to participate as a mentor, an entity must—

(1) Be eligible for the award of Federal contracts;

(2) Demonstrate that it—

(i) Is qualified to provide assistance that will contribute to the purpose of the Program;

(ii) Is of good financial health and character; and

(iii) Is not on a Federal list of debarred or suspended contractors; and

(3) Be capable of imparting value to a protégé firm because of experience gained as a DoD contractor or through knowledge of general business operations and Government contracting, as demonstrated by evidence that such entity—

(i) Received DoD contracts and subcontracts equal to or greater than $100 million during the previous fiscal year;

(ii) Is an other-than-small business, unless a waiver to the small business exception has been obtained from the Director, Small Business Programs (SBP), OUSD(AT&L);

(iii) Is a prime contractor to DoD with an active subcontracting plan; or

(iv) Has graduated from the 8(a) Business Development Program and provides documentation of its ability to serve as a mentor.

(b) To be eligible to participate as a protégé, an entity must be—

(1) A small business concern;

(2) Eligible for the award of Federal contracts;

(3) Less than half the Small Business Administration (SBA) size standard for its primary North American Industry Classification System (NAICS) code;

(4) Not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm; and

(5) At least one of the following:

(i) A qualified HUBZone small business concern.

(ii) A women-owned small business concern.

(iii) A service-disabled veteran-owned small business concern.

(iv) An entity owned and controlled by an Indian tribe.

(v) An entity owned and controlled by a Native Hawaiian organization.

(vi) An entity owned and controlled by socially and economically disadvantaged individuals.

(vii) A qualified organization employing severely disabled individuals.

(viii) A nontraditional defense contractor.

(ix) An entity that currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key DoD needs.

(c) Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (b) of this section, except that a mentor firm is required to confirm a protégé's status as a HUBZone small business concern (see FAR 19.703(d)).

(d) If at any time the SBA (or DoD in the case of entities employing severely disabled individuals) determines that a protégé is ineligible, assistance that the mentor firm furnishes to the protégé after the date of the determination may not be considered assistance furnished under the Program.

* * * * *

I–104 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms that qualify under I–102(b). Mentor firms are encouraged to identify and select concerns that have not previously received significant prime contract awards from DoD or any other Federal agency.

* * * * *

(e) A protégé firm may not be a party to more than one DoD mentor-protégé agreement at a time, and may only participate in the Program during the 5-year period beginning on the date the protégé firm enters into its first mentor-protégé agreement.

I–105 Mentor approval process.

* * * * *

(b) * * *

(1) A statement that the entity meets the requirements in I–102(a), specifying the criteria in I–102(a)(3) under which the entity is applying.

* * * * *

(7) The total dollar amount and percentage of subcontracts that the entity awarded to firms qualifying under I–102(b)(5)(ii) through (viii) during the 2 preceding fiscal years. (Show DoD subcontract awards separately.) If the entity was required to submit a Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System, the request must include copies of the final reports for the 2 preceding fiscal years.

* * * * *

(c) A template of the mentor application is available at: *http://www.acq.osd.mil/osbp/sb/programs/mpp/resources.shtml.*

* * * * *

I–107 Elements of a mentor-protégé agreement.

* * * * *

(b) The NAICS code(s) that represent the contemplated supplies or services to be provided by the protégé firm to the mentor firm and a statement that, at the time the agreement is submitted for approval, the protégé firm does not exceed the size standard in I–102(b)(3);

* * * * *

(e) Assurances that—

(1) The mentor firm does not share, directly or indirectly, with the protégé firm ownership or management of the protégé firm;

(2) The mentor firm does not have an agreement, at the time the mentor firm enters into a mentor-protégé agreement, to merge with the protégé firm;

(3) The owners and managers of the mentor firm are not the parent, child, spouse, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, or first cousin of an owner or manager of the protégé firm;

(4) The mentor firm has not, during the 2-year period before entering into a mentor-protégé agreement, employed any officer, director, principal stock holder, managing member, or key employee of the protégé firm;

(5) The mentor firm has not engaged in a joint venture with the protégé firm during the 2-year period before entering into a mentor-protégé agreement, unless such joint venture was approved by SBA prior to making any offer on a contract;

(6) The mentor firm is not, directly or indirectly, the primary party providing contracts to the protégé firm, as measured by the dollar value of the contracts; and

(7) The SBA has not made a determination of affiliation or control;

(f) A preliminary assessment of the developmental needs of the protégé firm;

(g) A developmental program for the protégé firm including—

(1) The type of assistance the mentor will provide to the protégé and how that assistance will—

(i) Increase the protégé's ability to participate in DoD, Federal, and/or commercial contracts and subcontracts; and

(ii) Increase small business subcontracting opportunities in industry categories where eligible protégés or other small business firms are not dominant in the company's vendor base;

(2) Factors to assess the protégé firm's developmental progress under the Program, including specific milestones for providing each element of the identified assistance;

(3) A description of the quantitative and qualitative benefits to DoD from the agreement, if applicable; and

(4) Goals for additional awards for which the protégé firm can compete outside the Program;

* * * * *

I–109 Reimburseable agreements.

* * * * *

(e) DoD may not reimburse any fee to the mentor firm for services provided to the protégé firm pursuant to I–106(d)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protégé firm.

* * * * *

I–112.2 Program specific reporting requirements.

(a) Mentors must report on the progress made under active mentor-protégé agreements semiannually for the periods ending March 31st and September 30th throughout the Program participation term of the agreement. The September 30th report must address the entire fiscal year.

(1) Reports are due 30 days after the close of each reporting period.

(2) Each report must include the following data on performance under the mentor-protégé agreement:

(i) Dollars obligated (for reimbursable agreements).

(ii) Expenditures.

(iii) Dollars credited, if any, toward applicable subcontracting goals as a result of developmental assistance provided to the protégé and a copy of the ISR or SF 294 and/or SSR for each contract where developmental assistance was credited.

(iv) Any new awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(v) All technical or management assistance provided by mentor firm personnel for the purposes described in I–106(d).

(vi) Any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under DoD contracts or other contracts, including the value of such subcontracts.

(vii) The amount of any payment of progress payments or advance payments made to the protégé firm for performance under any subcontract made under the Program.

(viii) Any loans made by the mentor firm to the protégé firm.

(ix) All Federal contracts awarded to the mentor firm and the protégé firm as a joint venture, designating whether the award was a restricted competition or a full and open competition.

(x) Any assistance obtained by the mentor firm for the protégé firm from the entities listed at I–106(d)(6).

(xi) Whether there have been any changes to the terms of the mentor-protégé agreement.

(xii) A narrative describing the following:

(A) The success assistance provided under I–106(d) has had in addressing the developmental needs of the protégé firm.

(B) The impact on DoD contracts.

(C) Any problems encountered.

(D) Any milestones achieved in the protégé firm's developmental program.

(E) Impact of the agreement in terms of capabilities enhanced, certifications received, and technology transferred.

(3) In accordance with section 861, paragraph (b)(2), of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), the reporting requirements specified in paragraphs (a)(2)(iv) through (a)(2)(xii)(C) of this section apply retroactively to mentor-protégé agreements that were in effect on November 25, 2015. Mentors must submit reports as described in paragraph (a) of this section.

(4) A recommended reporting format and guidance for its submission are available at: *http://www.acq.osd.mil/osbp/sb/programs/mpp/resources.shtml.*

(b) The protégé must provide data, annually by October 31st, on the progress made during the prior fiscal year by the protégé in employment, revenues, and participation in DoD contracts during—

(1) Each fiscal year of the Program participation term; and

(2) Each of the 2 fiscal years following the expiration of the Program participation term.

(c) The protégé report required by paragraph (b) of this section may be provided as part of the mentor report for the period ending September 30th required by paragraph (a) of this section.

(d) Progress reports must be submitted—

(1) For credit agreements, to the cognizant Component Director, SBP, that approved the agreement, and the mentor's cognizant DCMA administrative contracting officer; and

(2) For reimbursable agreements, to the cognizant Component Director, SBP, the contracting officer, the DCMA administrative contracting officer, and the program manager.

[FR Doc. 2016–22574 Filed 9–22–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 160617541–6541–01]

RIN 0648–BG15

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 47 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) and to make minor clarifications to regulations implementing the Crab FMP. This proposed rule addresses how individual processing quota (IPQ) use caps apply to the Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: The eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT). This proposed rule would exempt EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the processing facility owners from being applied against the IPQ use cap of the processing facility owners, thereby allowing a facility to process more crab without triggering the IPQ use cap. This proposed exemption is necessary to allow all of the EBT and WBT Class A individual fishing quota crab to be processed at the facilities currently processing EBT and WBT crab, and would have significant positive economic effects on the fishermen, processors, and communities that participate in the EBT and WBT fisheries. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Crab FMP, and other applicable law.

DATES: Submit comments on or before October 24, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0081, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0081* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 47 to the Crab FMP, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the "Analysis"), and the Categorical Exclusion prepared for this proposed action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S.

fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

A notice of availability for Amendment 47 was published in the **Federal Register** on September 13, 2016; 81 FR 62850. Comment on Amendment 47 is invited through November 14, 2016. All relevant written comments received by the end of the comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 47 and addressed in the response to comments in the final rule.

This proposed rule would modify regulations that specify how IPQ use caps apply to IPQ issued for EBT and WBT crab fisheries. The following sections describe (1) the BSAI crab fisheries under the Crab Rationalization Program (Program), (2) IPQ use caps and custom processing arrangements, (3) IPQ use caps applicable to the EBT and WBT crab fisheries, and (4) this proposed rule and the anticipated effects of the action.

The BSAI Crab Fisheries Under the Program

The Program was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Under the Program, NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; catcher/processor crew QS was issued to captains and crew on board catcher/processor vessels; and catcher vessel crew QS was issued to captains and crew on board catcher vessels. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (*i.e.*, CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a processor holding IPQ for that fishery. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

NMFS issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other Program fisheries, the QS and PQS issued for the EBT and WBT crab fisheries are not subject to regional delivery and processing requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS, can be delivered to, and processed at, any otherwise eligible processing facility.

In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to right-of-first-refusal (ROFR) provisions included in the Program. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to processors in a broad geographic area more easily than crab harvested under Class A IFQ permits in Program fisheries subject to regionalization and ROFR provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is described in the Program EIS (see **ADDRESSES**), and in the final rule implementing the Program (70 FR 10174, March 2, 2005).

IPQ Use Caps and Custom Processing Arrangements

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS. To address these concerns, the Program limits the amount of QS that a person can hold (*i.e.*, own), the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In most of the nine BSAI crab fisheries under the Program, including the Tanner crab fisheries, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. No person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS (see Section 2.5.2 of the Analysis). Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS. The rationale for the IPQ use caps is described in the Program EIS and the final rule implementing the Program (70 FR 10174, March 2, 2005).

The Program is designed to minimize the potential for a person to evade the PQS ownership and IPQ use caps through corporate affiliations or other legal relationships. To accomplish this, § 680.7(a)(7) prohibits an IPQ holder from using more IPQ than the maximum amount of IPQ that may be held by that person. Section 680.7(a)(7) also provides that IPQ use by a person is calculated by summing the total amount of IPQ that is held by that person and IPQ held by other persons who are affiliated with that person. The term "affiliation" is defined in § 680.2 as a relationship between two or more entities where one entity directly or indirectly owns or controls 10 percent or more of the other entity. Additional terms used in the definition of "affiliation" are described in § 680.2.

Under § 680.7(a)(7), any IPQ crab that is "custom processed" at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the

IPQ holder does not have an ownership interest in that processing facility or is otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder's specifications. Custom processing arrangements typically occur when an IPQ holder does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed. For ease of reference, this preamble refers to this exemption as a "custom processing arrangement exemption." NMFS refers the reader to the preamble to the final rule implementing Amendment 27 to the Crab FMP for additional information regarding the rationale for custom processing arrangement exemptions in specific BSAI crab fisheries. Section 680.42(b)(7) describes the three requirements that must be met for the custom processing arrangement exemption to apply.

First, the custom processing arrangement exemption applies to IPQ issued in six BSAI crab fisheries. Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing arrangement exemption applies—Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Islands blue and red king crab, Saint Matthew blue king crab, Western Aleutian Islands golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. As described later in this preamble, the custom processing arrangement exemption implemented under Amendment 27 does not apply to custom processing arrangements in the EBT and WBT crab fisheries.

Second, the custom processing arrangement exemption applies provided there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. As noted earlier, "affiliation" is defined under § 680.2 as a relationship between two or more entities where one directly or indirectly owns or controls 10 percent or more of the other entity. Under § 680.42(b)(7)(i), NMFS does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility as long as the person whose IPQ crab is custom processed at that facility does not directly or indirectly own or control 10 percent or more of the entity that owns the processing facility. In such a case, NMFS credits a person who holds IPQ and who owns a processing facility only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, these regulations allow processing facility owners who also hold IPQ to use their facility, or facilities, to establish custom processing arrangements with other IPQ holders to process more crab without exceeding IPQ use caps, thereby increasing the amount of crab available for processing at the facility (*i.e.,* throughput) and providing a more economically viable processing operation. These regulations effectively allow more than 30 percent of the IPQ for the six BSAI crab fisheries to be processed at a facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility.

Third, a custom processing arrangement exemption applies provided the facility at which the IPQ crab are custom processed meets specific location requirements. Under § 680.42(b)(7)(ii)(B), IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of regulations implementing Amendment 27 (June 29, 2009) and is either 1) a shoreside crab processor or 2) a stationary floating crab processor that is located within a harbor and moored at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. The specific provisions applicable to facilities operating within the City of Atka are not directly relevant to the EBT and WBT crab fisheries and this proposed rule, and are not addressed further. Additional information on the location requirements for facilities is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009).

Finally, § 680.7(a)(8) prohibits a shoreside crab processor or a stationary floating crab processor in which no IPQ holder has a 10 percent or greater ownership interest in the processing facility from receiving more than 30 percent of the IPQ issued for a particular crab fishery. However, as with facilities that have an IPQ holder with a 10 percent or greater ownership interest, IPQ crab processed at these facilities under a custom processing arrangement does not apply against the limit on the maximum amount of IPQ crab that can be processed at such a facility.

Regulations implementing Amendment 27 also created a custom processing exemption for IPQ crab subject to ROFR provisions (see § 680.42(b)(7)(ii)(C) and Section 2.5.2.1 of the Analysis). However, as noted earlier in this preamble, ROFR requirements do not apply to EBT and WBT crab and modifications to IPQ use cap calculations for IPQ crab subject to ROFR provisions that were made by Amendment 27 are not described further in this proposed rule. As a result of Amendment 27, EBT and WBT crab are the only Program fisheries in which all IPQ crab apply to the IPQ use caps of the facility owners, even though the processing of EBT and WBT is done by the same companies and facilities that process all other Program crab fisheries, which have custom processing arrangement exemptions and certain exemptions for IPQ crab subject to ROFR.

IPQ Use Caps Applicable to the EBT and WBT Crab Fisheries

As noted earlier, the EBT and WBT crab fisheries are not crab fisheries to which the custom processing arrangement exemption applies, and EBT and WBT IPQ crab that are processed under a custom processing arrangement apply against a person's IPQ use cap if that person owns the facility (*i.e.,* has a 10 percent or greater direct or indirect ownership interest) at which those IPQ crab are custom processed. Given that the EBT and WBT IPQ use caps are set at 30 percent, a minimum of four persons who are not affiliated with each other (*i.e.,* a 10 percent or greater direct or indirect ownership interest) must receive and process EBT or WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no person exceeding the IPQ use caps.

When the Council recommended and NMFS implemented Amendment 27, the Council and NMFS did not create a custom processing arrangement for the EBT and WBT crab fisheries. The preamble to the proposed rule implementing Amendment 27 explains that the Council and NMFS did not recommend a custom processing arrangement exemption for EBT and WBT IPQ crab because EBT and WBT crab QS do not have regional landing requirements and therefore can be effectively delivered to any otherwise eligible processor with matching IPQ in any location (73 FR 54351, September 19, 2008). Table 2–5 in Section 2.6.1 of the Analysis shows that during the 2006/2007 crab fishing year, there were six processing facilities owned by five unaffiliated processors receiving EBT Class A IFQ crab, and there were five processing facilities owned by four unaffiliated processors receiving WBT Class A IFQ crab. Since then, there has been consolidation in the BSAI crab processing sector, thus reducing the number of processing facilities that are unaffiliated with one another. This consolidation has occurred through the merger of two companies and the recent exit of a company from the fishery. Additionally, PQS has been purchased by entities that do not own or operate processing facilities. As Section 2.6 of the Analysis describes (see **ADDRESSES**), for the first year since the start of the Program, there were only three unique unaffiliated persons (processors) who received EBT and WBT IPQ crab at their facilities during the 2015/2016 crab fishing year. These three processors are the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. Information in section 2.6 of the Analysis explains that these three processors also own and operate all of the facilities that processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

Emergency Rule

At its December 2015 meeting, the Council determined that the unforeseen and recent exit of one Tanner crab processor from processing caused the remaining processors currently operating in the Bering Sea region to be constrained by IPQ use caps in the Tanner crab fisheries. With the loss of this unique, unaffiliated processor, less than the required minimum of four unique and unaffiliated processors remain active in the EBT and WBT crab fisheries; therefore, only 90 percent of the Class A IFQ could have been delivered to, and only 90 percent of the IPQ could have been used at, facilities owned and operated by the remaining processors—Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods—without exceeding the IPQ use caps. The remaining 10 percent of the EBT Class A IFQ/IPQ and WBT Class A IFQ/IPQ would have had to be delivered to processing facilities unaffiliated with these three processors, or left unharvested (see Section 2.6.1 of the Analysis for more detail). Based on these conditions and the low probability that a new, unaffiliated processor would enter the fishery at that time, the Council voted to request that NMFS promulgate an emergency rule to temporarily allow a custom processing exemption to the IPQ use caps for the 2015/2016 crab fishing year in the EBT and WBT crab fisheries. Without emergency action, 10 percent of the Tanner crab Class A IFQ likely would have been stranded (826,322 pounds of EBT and 615,489 pounds of WBT for the 2015/2016 crab fishing year).

The Council and NMFS considered a range of factors before the Council recommended and NMFS implemented the emergency rule. First, the Council and NMFS considered whether developing or using an alternative shorebased processing facility in the Bering Sea that was not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would be a feasible processing option for the remainder of the 2015/2016 crab fishing year. At the time, there was no unaffiliated company that expressed interest in entering the fishery. Additionally, the Council and NMFS determined that the regulatory closure date for the EBT and WBT crab fisheries provided very limited time for IPQ holders to find an alternative processing facility.

Second, the Council and NMFS also considered whether alternative shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, such as facilities in Kodiak, AK, could be used. The Council and NMFS concluded that transporting EBT or WBT crab to those locations would result in longer trips with increased fuel and operating costs for harvesters, result in lost fishing days while the crab are being transported, and increase the potential for deadloss (death) of crab.

Third, the Council and NMFS considered whether the use of a stationary floating crab processor would be a feasible processing option for the remainder of the 2015/2016 crab fishing year. At the time, there was no unaffiliated company that expressed interest in entering the fishery. The Council and NMFS concluded that establishing a contract with a stationary floating crab processor, outfitting the vessel, and establishing a market for delivered Class A IFQ EBT and WBT crab in the short amount of time available before the end of the fisheries during the 2015/2016 crab fishing year would present many of the same logistical challenges that are present for alternative shoreside processing facilities. These factors made it highly unlikely that a new, unaffiliated processor would enter the fishery using a floating processor.

Finally, the Council and NMFS determined that any IPQ holder hoping to secure an alternative shoreside processing facility or a stationary floating crab processor during the 2015/2016 crab fishing year would have had very little negotiating leverage with any unaffiliated processing facility given the amount of time remaining for the EBT and WBT crab season. That lack of negotiating leverage in establishing delivery terms and conditions could impose additional costs on IPQ holders and harvesters that may make such deliveries uneconomic. The Council and NMFS concluded that there did not appear to be any viable delivery options available for 10 percent of the EBT and WBT Class A IFQ during the remainder of the 2015/2016 crab fishing year.

On January 26, 2016 (81 FR 4206), NMFS published an emergency rule that temporarily exempted EBT and WBT IPQ crab that was custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. The temporary rule expired on June 30, 2016. Additional detail on the factors considered by the Council and NMFS are described in the preamble to the emergency rule (January 26, 2016, 81 FR 4206).

This Proposed Rule and Its Anticipated Effects

At its June 2016 meeting, the Council voted to recommend Amendment 47, which would create a custom processing arrangement exemption for EBT and WBT crab. The Council determined that all of the factors that supported their recommendation for an emergency rule for the 2015/2016 crab fishing year continue to exist. The Council recognized that consolidation within the Tanner crab processing sector has constrained the ability of the processing sector to process all of the EBT and WBT Class A IFQ crab without exceeding the IPQ use caps. The Council determined that without additional unique and unaffiliated processing facilities entering the Tanner crab processing sector for the 2016/2017 crab fishing year or beyond, there is a significant risk that the portion of the Tanner crab allocation in excess of the caps would not be processed. Without the ability to have all EBT and WBT Class A IFQ processed, that portion of the Tanner crab allocation in excess of the caps would likely go unharvested because sufficient processing facilities do not exist in the Bering Sea region.

The Council also acknowledged that while additional consolidation within the EBT and WBT processing sector could occur under Amendment 47, the Council does not expect additional consolidation to occur for reasons explained below. NMFS also did not intend for the IPQ use caps to strand a portion of the fishery, however, without the proposed exemption, harvesters, processors, and communities would lose the potential benefits from the stranded portion of crab. The management objective of this action is to provide a custom processing arrangement exemption for the EBT and WBT crab fisheries so that the full Tanner crab allocation can be harvested and processed.

Proposed Regulations To Implement Amendment 47

This proposed rule would modify § 680.42(b)(7)(ii)(A) by adding EBT and WBT IPQ crab to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. This would allow EBT and WBT IPQ crab received for custom processing by the three processors currently operating in these fisheries to qualify for a custom processing arrangement exemption and not apply against the IPQ use caps for these processors. With this proposed rule, all EBT and WBT IPQ crab received under custom processing arrangements at the facilities owned by the three existing EBT and WBT processors (Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods) would not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption would allow these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries.

The anticipated effects of this proposed rule include allowing the full processing of all EBT and WBT Class A IFQ crab and the associated economic and social benefits of that processing activity for harvesters, the existing Tanner crab processors, and the communities where processing facilities are located. These communities include Akutan, Dutch Harbor/Unalaska, King Cove, and Saint Paul. The proposed rule would allow all of the Tanner crab Class A IFQ to be harvested and processed by existing processors and thus avoid the adverse economic and social impacts created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully processed. Ten percent of the EBT and WBT Class A IFQ crab represents approximately $3.4 million in ex-vessel value and $4.95 million in first wholesale value based on estimated ex-vessel and first wholesale values of EBT and WBT crab in the 2015/2016 crab fishing year (see Section 2.9 of the Analysis for additional detail).

The Council and NMFS considered whether this proposed rule could result in further consolidation of Tanner crab processing to fewer facilities than currently operating. Under this proposed rule, there would be no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or ROFR, there would be no regulatory limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility.

The Council and NMFS determined that operational factors make it unlikely that additional consolidation will occur. First, the extent to which the proposed exemption allows further consolidation depends on whether processors choose to enter custom processing arrangements with IPQ holders. The choice to enter those arrangements would depend largely on the benefit to the IPQ holder arising from using the IPQ at the holder's own facility or custom processing the IPQ at a plant unaffiliated with the IPQ holder. Collectively, the three companies and their facilities that process Tanner crab have substantial holdings of IPQ (see Table 2–3 of the Analysis). It is likely more economical for these companies to process the IPQ they hold at their facilities rather than negotiate a custom processing agreement with another processor, which would reduce the likelihood of further consolidation.

Second, the extent of further consolidation depends on the business decisions that participants make regarding their participation in other crab fisheries, such as Bristol Bay red king crab and Bering Sea *opilio.* None of the current Tanner crab processors only process Tanner crab; all companies and facilities that process Tanner crab also process Bristol Bay red king crab and Bering Sea *opilio.* Crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews to run crab processing lines at a plant can be high. Processors that are active in other BSAI crab fisheries may be more likely to continue processing in the Tanner crab fisheries to help maintain a consistent amount of crab available for processing at the facility (see Section 2.9.2 of the Analysis for more information).

Third, processors are likely to maintain processing facilities near the fishing grounds. Proximity to the fishing grounds may help prevent or reduce deadloss, dead crab landed at the dock, which is associated with increased transit time between the fishing grounds and offload. Additionally, proximity to the fishing grounds can help harvesters maximize their efficiency and prevent the need to spend significant time transiting to and from processing facilities for offload. Given these factors, the Council and NMFS concluded that additional consolidation of processing activity in the EBT and WBT fisheries is unlikely under current and projected operations.

The proposed rule would provide a benefit to processors willing to custom process Class A IFQ for EBT and WBT crab, and those IPQ holders that do not own processing facilities and must have their crab custom processed. The proposed custom processing arrangement exemption for EBT and WBT IPQ crab would avoid the adverse economic impacts created by the 30 percent IPQ use cap for Tanner crab fisheries to IPQ holders that own and operate processing facilities. This proposed rule would also benefit those IPQ holders that do not have processing facilities since their IPQ could be custom processed by an existing facility and their custom processing arrangement would not count against the 30 percent IPQ use cap (see Section 2.9.2 of the Analysis for further information).

This proposed rule is expected to benefit harvesters who hold Class A IFQ for EBT and WBT crab. Without this proposed rule, harvesters with EBT or WBT Class A IFQ likely would be unable to fully harvest allocations provided to them due to IPQ use cap limitations imposed on IPQ holders and the three existing processors that receive EBT and WBT crab. This proposed rule would allow Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their IFQ allocations, because those Class A IFQ holders who match with IPQ holders that do not own processing facilities would be able to deliver their IFQ to a processing facility that has a custom processing arrangement with that IPQ holder.

The effects of this proposed rule on communities and community sustainability are expected to be beneficial. This proposed rule would continue the delivery of EBT and WBT Class A IFQ crab to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods in BSAI communities. This would increase economic activity, the amount of income generated, and the amount of tax revenues in communities where existing processing facilities are located relative to not creating an exemption. Therefore, the effects of the proposed rule would be beneficial overall to communities with processors with EBT and WBT IPQ as compared with no action. However, if further consolidation occurs under this proposed action, companies may suspend crab processing at facilities in particular communities, causing adverse economic impacts on communities that lose Tanner crab processing activity. As explained above, there are several factors that make further consolidation unlikely.

Although this proposed rule would provide a benefit to the existing three processors with processing facilities, this rule would not preclude the ability for new, unaffiliated processing companies to enter the EBT and WBT fisheries, establish custom processing arrangements with IPQ holders, and process EBT and WBT crab. Section 2.9.2 of the Analysis provides more detail on the potential for new unaffiliated processing companies to enter the EBT and WBT crab fisheries.

Proposed Regulation To Make a Minor Clarification

This proposed rule would also modify § 680.42(b)(7)(ii)(B) to clarify the meaning of the phrase "on the effective date of this rule" that occurs in § 680.42(b)(7)(ii)(B). The phrase "on the effective date of this rule" in § 680.42(b)(7)(ii)(B) refers to the effective date of the regulations that implemented Amendment 27 to the Crab FMP and that added § 680.42(b)(7)(ii)(B) to the regulations (74 FR 25449, May 28, 2009). Regulations implementing Amendment 27 to the Crab FMP were published on May 28, 2009, and became effective on June 29, 2009. The phrase "on the effective date of this rule" was inadvertently left in the regulatory text and not replaced with the actual effective date of the rule. This proposed rule would revise the phrase "on the effective date of this rule" to read "on June 29, 2009" to reduce any confusion about the applicable date for the requirements in § 680.42(b)(7)(ii)(B). This minor correction does not substantively change the intent or effect of § 680.42(b)(7)(ii)(B).

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 47, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

The IRFA describes this proposed rule, why this rule is being proposed, the objectives and legal basis for this proposed rule, the type and number of small entities to which this proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of this proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic impact of this proposed rule on small entities. The description of this proposed rule, its purpose, and its legal basis are described in the preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The Small Business Act (SBA) has established size criteria for all other major industry sectors in the United States, including fish processing businesses. On January 26, 2016, the SBA issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). The final rule modified the size standard for "seafood product preparation and packaging" (NAICS code 311710) that applies to seafood processors. The final rule also modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all their affiliated operations worldwide.

The entities directly regulated by this action are those entities that process EBT and WBT crab. It does not include entities that harvest Class A IFQ EBT and WBT crab. From 2012 through 2014, there were no processors considered small entities that would have been directly regulated by the proposed action.

This action would also directly regulate registered crab receivers (RCRs) as all Program crab must be received by an RCR. Some RCRs are the same entities that process Tanner crab, and others are those that have their Tanner crab custom processed. In 2015/2016, there were 10 RCRs that received Tanner crab, seven of which are considered large entities due to their affiliations with large seafood processing companies. The remaining three are considered small entities because they are not-for-profit organizations.

Recordkeeping and Reporting Requirements

This proposed action would not require any new recordkeeping and reporting requirements, or any modification of existing requirements.

Federal Rules That May Duplicate, Overlap, or Conflict With This Proposed Rule

No relevant Federal rules have been identified that would duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to This Proposed Rule That Minimize Economic Impacts on Small Entities

The action alternative would allow the full harvest and processing of the Tanner crab total allowable catch. This action is not expected to have negative economic impacts on the small entities directly impacted by this action. The Council also considered a limited duration option which would have created a temporary rule to provide a fix for the near term, but would require the Council to take further action if it intended to create a more long-term revision. The Council did not select this option as it already has the ability to examine processing activity in the Tanner crab fishery at any time and take future action on this subject. This option would not have had less economic impact on small entities as compared to the proposed rule as the proposed rule is not expected to have negative impacts.

List of Subjects in 50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: September 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.42, revise paragraphs (b)(7)(ii) introductory text, and (b)(7)(ii)(A) and (B) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(7) * * *

(ii) The IPQ crab meets the conditions in paragraphs (b)(7)(ii)(A) and (B) of this section or the IPQ crab meets the conditions in paragraph (b)(7)(ii)(C) of this section:

(A) The IPQ crab is:

(*1*) BSS IPQ crab with a North region designation;

(*2*) EAG IPQ crab;

(*3*) EBT IPQ crab;

(*4*) PIK IPQ crab;

(*5*) SMB IPQ crab;

(*6*) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude;

(*7*) WAI IPQ crab; or

(*8*) WBT IPQ crab.

(B) That IPQ crab is processed at:

(*1*) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(*2*) Any stationary floating crab processor that is:

(*i*) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(*ii*) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(*iii*) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009, in which case that stationary floating crab processor is not required to be located within a harbor.

* * * * *

[FR Doc. 2016–22911 Filed 9–22–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 185
Friday, September 23, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0057]

J.R. Simplot Company; Availability of Preliminary Finding of No Significant Impact, Preliminary Plant Pest Risk Similarity Assessment, and Preliminary Determination for an Extension of a Determination of Nonregulated Status for X17 and Y9 Potato Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has reached a preliminary decision to extend our determination of nonregulated status of J.R. Simplot Company's (Simplot) Innate™ Potato designated as Russet Burbank event W8 (the antecedent potato event) to Simplot's Ranger Russet variety (X17) and Atlantic variety (Y9) potatoes. Simplot's X17 and Y9 potatoes have been genetically engineered for late blight resistance, low acrylamide potential, lowered reducing sugars, and reduced black spot using the same genetic constructs used to transform the antecedent potato event. We are making available for public comment our preliminary determination, preliminary plant pest risk similarity assessment, and preliminary finding of no significant impact for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before October 24, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0057.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0057, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The J.R. Simplot Company extension request, our preliminary determination, preliminary plant pest risk similarity assessment, preliminary finding of no significant impact, and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0057* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents and any comments we received regarding our determination of nonregulated status of the antecedent organism (potato event W8) can be found at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0076.* Supporting documents may also be found on the APHIS Web site for X17 and Y9 (the organisms under evaluation) under APHIS Petition Number 16–064–01p, and the antecedent organism (potato event W8) under APHIS Petition Number 14–093–01p.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Biotechnology Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the supporting documents, contact Ms. Cindy Eck at (301) 851–3885, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (PPA) (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

In a notice[1] published in the **Federal Register** on September 2, 2015 (80 FR 53101–53102, Docket No. APHIS–2014–0076), APHIS announced our determination of nonregulated status of the J.R. Simplot Company's (Simplot) Innate™ Potato designated as Russet Burbank event W8, which has been genetically engineered for late blight resistance, low acrylamide potential, reduced black spot bruising, and lowered reducing sugars. APHIS has received a request from Simplot for an extension of that determination of nonregulated status to its Ranger Russet variety (X17) and Atlantic variety (Y9) potatoes (APHIS Petition Number 16–064–01p). In the extension request, Simplot named the previously deregulated W8 potato event as the antecedent organism. Like the antecedent, X17 and Y9 are genetically engineered for late blight resistance, low acrylamide potential, reduced black spot bruising, and lowered reducing sugars. In its request, Simplot stated that X17 and Y9 potatoes were produced by using the same genetic construct that was used to transform the antecedent potato and, based on the similarity, is unlikely to pose a plant pest risk. Therefore, the request stated that X17 and Y9 potatoes should not be regulated articles under APHIS' regulations in 7 CFR part 340.

As part of our decisionmaking process regarding a genetically engineered organism's regulatory status, APHIS evaluates the plant pest risk of the regulated article. In section 403 of the

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[1] To view the notice, our determination, supporting documents, and the comments we have received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS=2014=0076.*

PPA, "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

As described in the extension request, X17 and Y9 potatoes have been genetically engineered through the insertion of genetic elements from plant pest organisms listed in 7 CFR 340.2. APHIS previously completed a plant pest risk assessment (PPRA) associated with the insertion of these same genetic elements into potatoes during the review of the antecedent variety, Innate™ Russet Burbank event W8 potato, and concluded that the resulting organisms did not pose a plant pest risk.

X17 and Y9 potatoes express the same resistance for late blight resistance, low acrylamide potential, reduced black spot bruising, and lowered reducing sugars as the antecedent potato. APHIS prepared a plant pest risk similarity assessment (PPRSA) to compare X17 and Y9 potatoes to the antecedent. As described in the PPRSA, X17 and Y9 potatoes were obtained by introducing the same construct used to produce Innate™ Russet Burbank event W8 into the Ranger Russet variety (X17) and Atlantic variety (Y9). Based on our PPRA for the antecedent and the similarity between X17 and Y9 potatoes and the antecedent based on the PPRSA, APHIS has concluded that X17 and Y9 potatoes are unlikely to pose a plant pest risk.

The environmental assessment (EA) for the antecedent organism was prepared using data submitted by Simplot, a review of other scientific data, and field tests conducted under APHIS oversight. The EA was prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status of the antecedent potato. The EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Based on the similarity of X17 and Y9 potatoes to the antecedent potato, APHIS has prepared a preliminary finding of no significant impact (FONSI) on X17 and Y9 potatoes using the EA prepared for W8 potato. APHIS considered the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of X17 or Y9 potatoes and it would continue to be a regulated article, or (2) make a determination of nonregulated status of X17 and Y9 potatoes. APHIS' preferred alternative is to make a determination of nonregulated status of X17 and Y9 potatoes.

APHIS has carefully examined the existing NEPA documentation completed for W8 potato and has concluded that Simplot's request to extend a determination of nonregulated status to X17 and Y9 potatoes encompasses the same scope of environmental analysis as the antecedent potato.

Based on APHIS' analysis of information submitted by Simplot, references provided in the extension request, peer-reviewed publications, information analyzed in the EA, and the similarity of X17 and Y9 potatoes to the antecedent organisms, APHIS has determined that X17 and Y9 potatoes are unlikely to pose a plant pest risk. We have, therefore, reached a preliminary decision to approve the request to extend the determination of nonregulated status of W8 potato to X17 and Y9 potatoes, whereby X17 and Y9 potatoes would no longer be subject to our regulations governing the introduction of certain genetically engineered organisms.

Paragraph (e) of § 340.6 provides that APHIS will publish a notice in the **Federal Register** announcing all preliminary decisions to extend determinations of nonregulated status for 30 days before the decisions become final and effective. In accordance with § 340.6(e) of the regulations, we are publishing this notice to inform the public of our preliminary decision to extend the determination of nonregulated status of the antecedent potato to X17 and Y9 potatoes.

APHIS will accept written comments on its preliminary determination and the preliminary FONSI regarding a determination of nonregulated status of X17 and Y9 potatoes for a period of 30 days from the date this notice is published in the **Federal Register**. The preliminary FONSI, as well as the extension request, supporting documents, and our preliminary determination for X17 and Y9 potatoes, are available for public review as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. Copies of these documents may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments will be available for public review. After reviewing and evaluating the comments, if APHIS determines that no new information has been received that would warrant APHIS altering its preliminary regulatory determination or FONSI, our preliminary regulatory determination will become final and effective upon notification of the public through an announcement on our Web site at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml.*

APHIS will also furnish a response to the petitioner regarding our final regulatory determination. No further **Federal Register** notice will be published announcing the final regulatory determination regarding X17 and Y9 potatoes.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of September 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–22928 Filed 9–22–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dalton Mountain Forest Restoration and Fuels Reduction EIS—Helena-Lewis and Clark National Forest, Lewis and Clark County, Montana

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service is withdrawing the Notice of Intent to prepare an Environmental Impact Statement for the Dalton Mountain Forest Restoration and Fuels Reduction project on the Lincoln Ranger District of the Helena-Lewis and Clark National Forest. A Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** on November 16, 2011 (pages 70955–70956)

FOR FURTHER INFORMATION CONTACT: Jennifer Woods, Helena-Lewis and Clark National Forest, 1220 38th Street North, Great Falls, Montana 59405, (406) 791–7765.

Dated: September 14, 2016.

William Avey,

Forest Supervisor, Helena-Lewis and Clark National Forest.

[FR Doc. 2016–22780 Filed 9–22–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County, CO; Berlaimont Estates Access Route EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Berlaimont Estates LLC (Berlaimont) owns a 680-acre private inholding completely within the White River National Forest (WRNF) to the north of Interstate 70 in the vicinity of Edwards, Colorado. Berlaimont desires to develop the property as 19 individual residential lots. Currently, the subject property may be accessed by National Forest System Roads (NFSR) 774 and 780, which connect to the southeastern corner of the horseshoe-shaped subject property. Beyond the southeastern corner, NFSR 780 connects to the southwestern corner of the property and NFSR 783 connects to the northwestern corner and northern areas of the property from the west side. Additionally, the northern portion of the property may be accessed via NFSR 778 running up Berry Creek which connects with NFSR 783 providing access into the northern portion of the property from the east. All NFSR's in this area are currently low development, native surfaced roads.

Berlaimont has applied for an easement to construct, improve, utilize, and maintain road segments across the National Forest System (NFS) lands in support of their desired development of their property. Specifically, Berlaimont is proposing to improve segments of the existing NFSR 774 and NFSR 780, as well as construct a new road segment across additional NFS lands in order to more directly access the northern portion of their property. Their proposed improvements would consist of constructing a paved asphalt road with a gravel shoulder, vehicle turnouts, retaining walls, traffic signs, guardrails, erosion control facilities, and drainage facilities. The Forest Service will be analyzing this proposal along with a wider range of potential alternatives.

DATES: Comments concerning the scope of the analysis must be received by November 7, 2016. The draft environmental impact statement is expected to be available for public review March 2017 and the final environmental impact statement is expected June 2017.

ADDRESSES: Send written comments to Scott Fitzwilliams, Forest Supervisor, c/o Matt Klein, Realty Specialist, White River National Forest, P.O. Box 190, Minturn, CO 81645. Comments may also be sent via email to *matthewklein@fs.fed.us* (include "Berlaimont Estate Access Route EIS" in the subject line), electronically at *https://cara.ecosystem-management.org/Public//CommentInput?Project=50041,* or via facsimile to (970) 827–9343.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Holy Cross Ranger Station, 24747 U.S. Highway 24, Minturn, CO 81645. Visitors are encouraged to call ahead to (970) 827–5715 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Additional information related to the project can be obtained from the project Web page: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=50041* or by contacting Matt Klein, Realty Specialist, Eagle/Holy Cross Ranger District, 24747 U.S. Hwy 24, P.O. Box 190, Minturn, Colorado 81645. Mr. Klein can be reached by phone at (970) 827–5182 or by email at *matthewklein@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposed project is to provide an improved road to Berlaimont's private property.

The Alaska National Interest Lands Conservation Act (ANILCA) directs the Forest Service to provide adequate access to inholdings fully contained within national forest lands. The need for the proposed project is that Berlaimont desires to develop single family residences on their property. The current maintenance level and condition of the existing NSFRs are not at the level desired by Berlaimont to meet their full objectives. Determination of the level of adequate access under ANILCA is not done through a NEPA analysis; however, the effects of issuing an easement to provide adequate access do need to be analyzed. The level of use and development granted through a Record of Decision may equal or exceed the level that shall be identified through the separate ANILCA determination.

Proposed Action

The Proposed Action is to grant an easement to Berlaimont to improve, utilize, and maintain segments of the existing NFSR 774 and NFSR 780, to the southeastern corner of the property only.

Amendment to the WRNF Land and Resource Management Plan—For this project, a Forest Plan amendment may be necessary because the proposed action and some possible alternatives may not be consistent with the prescribed standards and guidelines for Management Area 5.41 (Deer and Elk Winter Range).

Possible Alternatives

An alternative will also be analyzed that includes the proposed action with the addition of constructing, utilizing, and maintaining a new road segment across NFS lands in order to access the northern portion of the property. Further alternatives may include improving other sections of NFSR's 780, 783 or 778 to the northern portion of the property.

Responsible Official

The Responsible Official is Mr. Scott Fitzwilliams, Forest Supervisor, c/o Matt Klein, Realty Specialist, White River National Forest, P.O. Box 190, Minturn, CO 81645.

Nature of Decision To Be Made

Based on the analysis that will be documented in the forthcoming EIS, the Responsible Official will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative that may be developed by the Forest Service as a result of scoping.

Preliminary Issues

The proposed road improvement may have an impact on:

Wildlife—The area of NFS lands surrounding the property is identified in the WRNF's Land and Resource Management Plan as deer and elk winter range managed to provide adequate amounts of quality forage, cover and solitude.

Visual Resource Management—Each alternative road alignment and degree of improvement (streetlamps, for example) may affect the visual aesthetics of the north Edwards viewshed from either the valley floor or the north-facing hillsides on the opposite side of the valley.

Soils—Road design and construction could present both short-term (construction) and long-term (operation and use) effects on soil stability and erosion prevention.

Water Quailty—As with the potential soil impacts described above, road construction and use could alter runoff patterns for stormwater and snowmelt in such a way as to potentially effect water quality of nearby creeks and streams through sedimentation and turbidity or the introduction of foreign chemicals.

Outdoor Recreation/Public Access—NFSR 774 is a popular route with the public for accessing the Red and White Mountain area. This route is a point of entry for a multitude of recreational activities, including hiking, mountain biking, wildlife viewing, OHV riding, hunting, and snowmobile riding. NFSR's 778, 780 and 783 provide public access into the areas completely surrounding Berlaimont's private land. Use of any of these routes by Berlaimont residents and guests could increase user conflicts with WRNF visitors. Phyiscal improvments to the roadway could be benficial to some types of recreational activities, while simultaneously having a determential effect on others.

Grazing—The NFS lands surrounding the subject property are currently used as an active grazing allotment for up to 2,900 sheep.

Permits or Licenses Required

This Proposed Action considers the issuance of a road easement from the Forest Service to Berlaimont under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA).

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the Environmental Impact Statement (EIS). The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed project. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify alternative actions and resource issues that will be analyzed in the EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

A public open house meeting was held on Wednesday, September 7th, 2016 in Edwards, CO to inform the public and help to shape this proposal.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however those comments will not provide the commenter with standing to appeal the subsequent decision.

There will be an additional opportunity to comment when the Notice of Availability of the Draft EIS is published in the **Federal Register**. It is anticipated that another public meeting will be held at that time to discuss the Draft EIS. For objection eligibility, each individual or representative from each entity submitting written comments must either sign the comment or verify identity upon request. Individuals and organizations wishing to be eligible to object must meet the information requirements in 36 CFR 218.25(a)(3).

Dated: September 19, 2016.

Scott Fitzwilliams,

Forest Supervisor.

[FR Doc. 2016–22924 Filed 9–22–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

DATES: Thursday, October 27, 2016.

Time: 1:00 p.m.–2:00 p.m. (PST).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada State Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Thursday, October 27, 2016, for the purpose discussing civil rights issues in the state and deliberating on a topic of study.

DATES: The meeting will be held on Thursday, October 27, 2016, at 1:00 p.m. PST.

Public Call Information:

Dial: 888–296–4215

Conference ID: 3627025

FOR FURTHER INFORMATION CONTACT: Angelica Trevino at *atrevino@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–296–4215, conference ID number: 3627025. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60603. They may be faxed to the Commission at (312) 353–8324, or emailed to David Mussatt, Regional Programs Unit at *dmussatt@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=261*. Please click on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Introductions—Wendell Blaylock, Chair of the Nevada Advisory Committee

II. Discussion of Civil Rights Issues in Nevada—Member of the Nevada Advisory Committee
III. Public Comment
IV. Adjournment

Dated: September 20, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–22965 Filed 9–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2016]

Foreign-Trade Zone (FTZ) 249—Pensacola, Florida; Authorization of Production Activity; GE Renewables North America, LLC (Wind Turbine Nacelles and Hubs); Pensacola, Florida

On May 23, 2016, GE Renewables North America, LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 249A, in Pensacola, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 39626–39627, June 17, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 20, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–23009 Filed 9–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2016]

Foreign-Trade Zone (FTZ) 177—Evansville, Indiana; Notification of Proposed Production Activity; Best Chairs, Inc. d/b/a Best Home Furnishings (Upholstered Furniture); Ferdinand, Cannelton and Paoli, Indiana

Best Chairs, Inc. d/b/a Best Home Furnishings (Best Home) submitted a notification of proposed production activity to the FTZ Board for its facilities in Ferdinand, Cannelton and Paoli, Indiana within FTZ 177. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 14, 2016.

The Best Home facilities are located within Sites 5, 6, and 7 of FTZ 177 and currently have authority to conduct cut-and-sew activity using certain foreign micro-denier suede upholstery fabrics and polyurethane fabrics to produce upholstered furniture and related parts (upholstery cover sets) on a restricted basis (Board Order 1807 and Doc. B–35–2014). Board Order 1807 authorized the production of upholstered furniture (sofas, sectionals, loveseats, chairs, and recliners) for a five-year period, with a scope of authority that only provides FTZ savings on a limited quantity (2.28 million square yards per year) of foreign origin, micro-denier suede upholstery fabric finished with a hot caustic soda solution process. Doc. B–35–2014 expanded the company's scope of authority to include certain polyurethane fabrics. All foreign upholstery fabrics other than micro-denier suede finished with a hot caustic soda solution process, polyurethane fabrics backed with ground leather, and wet coagulation process, 100 percent polyurethane coated fabrics used in Best Home's production within FTZ 177 are subject to full customs duties.

The current request seeks to extend Best Home's existing FTZ authority indefinitely (with no increase in the company's annual quantitative limit of 2.28 million square yards) and to add foreign-status leather and non-textile foreign-status components to the scope of authority. This request also seeks to clarify certain HTSUS numbers that apply to the company's existing authority for micro-denier suede upholstery fabric finished with a hot caustic soda solution process. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Best Home from customs duty payments on the foreign-status components used in export production. On its domestic sales, Best Home would be able to apply the finished upholstery cover set (*i.e.*, furniture part) or finished furniture duty rate (free) for the authorized fabrics and additional components (indicated below). Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components sourced from abroad include: Micro-denier suede fabric finished with a hot caustic soda finishing process; upholstery leather; linear actuators and motors; transformers; power adaptors; handset controllers; power cables; and, Y-cables (duty rate ranges from 1.6% to 17.2%). The request indicates that upholstery leather will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on upholstery leather. All other foreign, unauthorized upholstery fabrics or other components used in the production activity would continue to be admitted to the zone in domestic (duty paid) status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 2, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: September 19, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–23005 Filed 9–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is rescinding the administrative review of the countervailing duty order on drawn stainless steel sinks from the People's Republic of China for the period of review January 1, 2015, through December 31, 2015, based on the timely withdrawal of requests for review.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2016, the Department (the Department) published the notice of opportunity to request an administrative review of the countervailing duty order on drawn stainless steel sinks (sinks) from the People's Republic of China (PRC) for the period of review (POR) January 1, 2015, through December 31, 2015.[1] On April 28, 2016, Zhongshan Superte Kitchenware Co., Ltd. (Superte) requested an administrative review of its POR sales.[2] On April 29, 2016, Guangdong Yingao Utensils Co., Ltd. (Yingao), Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan), and Jiangmen New Star Hi-Tech Enterprise Ltd. (New Star) requested an administrative review of their POR sales.[3] On June 6, 2016, in accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of Superte, Yingao, Dongyuan, and New Star.[4] New Star and Yingao withdrew their requests for an administrative review on June 16, 2016.[5] Dongyuan and Superte withdrew their requests for an administrative review on August 22, 2016, and August 25, 2016, respectively.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party, or parties, that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all parties withdrew their requests for review within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of sinks from the PRC during the POR. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notifications to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of countervailing duties occurred and the subsequent assessment of double countervailing duties.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 16, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22878 Filed 9–22–16; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 18826 (April 1, 2016).

[2] *See* Letter from Superte, "Drawn Stainless Steel Sinks from China; Administrative Review Request," dated April 28, 2016.

[3] *See* Letters from Yingao, "Drawn Stainless Steel Sinks from the People's Republic of China Request for Administrative Review," Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China Request for Administrative Review," and New Star, "Drawn Stainless Steel Sinks from the People's Republic of China Request for Administrative Review," dated April 29, 2016.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 36268 (June 6, 2016).

[5] *See* Letters from New Star, "Drawn Stainless Steel Sinks from the People's Republic of China: Withdrawal of Request for Annual Administrative Review," and Yingao, "Drawn Stainless Steel Sinks from the People's Republic of China: Withdrawal of Request for Annual Administrative Review," dated June 16, 2016.

[6] *See* Letters from Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China: Withdrawal of Request for Countervailing Duty Administrative Review," dated August 22, 2016, and Superte, "Drawn Stainless Steel Sinks from China; Withdrawal of Administrative Review Request," dated August 25, 2016.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Office of National Marine Sanctuaries Visitor Centers Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 22, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Danielle Schwarzmann 240–533–0706 or *danielle.schwarzmann@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection of information. NOAA's Office of National Marine Sanctuaries (ONMS) is conducting research to measure the public's opinions about sanctuary visitor centers, exhibits, and kiosks. Exhibits and kiosks covered under the survey can be permanent or traveling/temporary. The survey will be administered annually both within an ONMS visitor center as well as at partner venues that host an exhibit or kiosk on a national marine sanctuary or marine national monument. The survey will cover visitor centers, exhibits, and kiosks system-wide across all the national marine sanctuaries and marine national monuments managed or co-managed by NOAA's ONMS.

The visitor survey will be conducted to obtain an objective analysis of visitor experiences within a sanctuary visitor center or at a partner venue that includes an exhibit or kiosk with information on a national marine sanctuary or marine national monument. Information will be obtained on visitor satisfaction with the overall exhibits or kiosks, graphics, multi-media products, interactives, along with the overall feelings about the facilities and services offered at the centers/venues. The survey will acquire data on the effectiveness of sanctuary/monument messaging, awareness about and use of sanctuary/monument resources, as well as additional recreational and/or educational opportunities available to the public. Lastly, the survey will include questions about visitor demographics.

The information will aid NOAA's Office of National Marine Sanctuaries budget allocation and prioritization, strategic planning, and management review process to better interpret the sanctuary/monument system and engage with constituents and the larger community on resource protection and conservation topics. Survey results will be used by sanctuary/monument site superintendents to improve visitor services where the survey is administered and will also aide sanctuary/monument headquarters communication and education staff to more effectively communicate key messages. In addition, the survey data will contribute to NOAA and DOC performance reports and year end summaries.

II. Method of Collection

The surveys will be conducted in person or through web applications at kiosks.

III. Data

OMB Control Number: 0648–xxxx.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 166.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 20, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–22966 Filed 9–22–16; 8:45 am]

BILLING CODE 3510–NK–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds product(s) and/or service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and/or service(s) from the Procurement List previously furnished by such agencies.

DATES: Effective October 23, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 6/10/2016 (81 FR 37581–37582), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.
2. The action will result in authorizing small entities to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Transcription Service
Service Mandatory for: U.S. Navy, Naval Medical Logistics Command, 693 Neiman Street, Fort Detrick, MD
Mandatory Source(s) of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: Dept of the Navy, Naval Medical Logistics Command

Deletions

On 8/19/2016 (81 FR 55447–55448) and 8/26/2016 (81 FR 58913–58917), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Janitorial/Custodial Service
Mandatory for: Gerald W. Heaney Federal Building and U.S. Courthouse, 515 West First Street, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Public Buildings Service, Property Management Service Center

Service Type: Custodial Service
Mandatory for: Superior National Forest Supervisors Office, 8901 Grand Avenue Place, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Forest Service, Superior National Forest

Service Type: Food Service Attendant
Mandatory for: 148th Fighter Wing: 4680 Viper St. (Dining Hall), Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of the Army, W7NG USPFO ACTIVITY MN ARNG
Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: 1500 St. Louis Avenue, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of the Army, W6QM MICC FT MCCOY (RC)
Service Type: Recycling Service
Mandatory for: March Air Reserve Base, March Air Force Reserve Base, CA
Mandatory Source(s) of Supply: Valley Resource Center for the Retarded, Inc., Hemet, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK
Service Type: Mailing Service
Mandatory for: USDA, Farm Service Agency, Phoenix, AZ
Mandatory Source(s) of Supply: Goodwill Community Services, Inc., Phoenix, AZ
Contracting Activity: Department of Agriculture, Procurement Operations Division
Service Type: Car Wash Service
Mandatory for: Customs and Border Protection, Indio Border Station, 83–801 Vin Deo Circle, Indio, CA
Mandatory Source(s) of Supply: Sheltering Wings Corp., Blythe, CA
Contracting Activity: U.S. Customs and Border Protection, Procurement Directorate

Service Type: Custodial Service
Mandatory for: FAA, Air Traffic Control Tower, Duluth International Airport, 4525 Airport Approach Road, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of Transportation, Federal Aviation Administration

Service Type: Recycling Service
Mandatory for: Naval Weapons Station: NAWS Recycling Center, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Grounds Maintenance Service
Mandatory for: China Lake Naval Air Weapons Station: Tot Lot Parks–Housing Area, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Grounds Maintenance Service
Mandatory for: Defense Commissary Agency, China Lake Naval Air Weapons Station Commissary, 1 Administration Circle, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, NAVFAC SOUTHWEST

Service Type: Data Entry/Data Base Management Service
Mandatory for: GSA, Washington: Federal Supply Service Bureau, L'Enfant Plaza, Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Food Service Attendants Service
Mandatory for: CRTC Dining Facility, 1401 Robert B. Miller Jr. Drive, Garden City, GA
Mandatory Source(s) of Supply: Trace, Inc., Boise, ID
Contracting Activity: Dept of the Air Force, FA6643 AF Reserve CMD HQ AFRC PK

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–22980 Filed 9–22–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product and services previously furnished by such agencies.

DATES: Comments must be received on or before October 23, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):
7520–00–SAM–0208—File Folder, Expanding, 12 Tab, Flap and Cord Closure, Polypropylene, Smoke Gray
7520–00–SAM–0209—File Folder, Expanding, 12 Tab, Flap and Cord Closure, Polypropylene, Blue
7520–00–SAM–0210—File Folder, Expanding, 12 Tab, Flap and Cord Closure, Polypropylene, Purple
7520–00–SAM–0212—File Storage Box, Expanding, Flap and Cord Closure, Polypropylene, Black
7520–00–SAM–0216—File Storage Box, Expanding, 19 tab, Alpha/Subject, Latch Closure, Pressboard and Kraft Paper, Black

7520–00–SAM–0218—File Folder, Expanding, 7 Tab with Pockets, Flap and Cord Closure, Polypropylene, Black
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: Exceptional Children's Foundation, Culver City, CA
Contracting Activity: General Services Administration, New York, NY
Distribution: A-List

Service

Service Type: Mailroom Operation
Mandatory for: Missile Defense Agency, Missile Defense Agency Mailroom, Schriever AFB, CO
Mandatory Source(s) of Supply: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: Missile Defense Agency, Huntsville, AL

Deletions

The following product and services are proposed for deletion from the Procurement List:

Product

NSN(s)—Product Name(s): 8030–01–347–0979—Compound, Corrosion Preventative, Type I, Class I
Mandatory Source(s) of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: General Services Administration, Kansas City, MO

Services

Service Type: Administrative/General Support Service
Mandatory for: GSA, Southwest Supply Center 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Custodial Service
Mandatory for: Department of Veterans Affairs, Quad Cities Veterans Center 1529 46th Avenue, Moline, IL
Mandatory Source(s) of Supply: The Arc of the Quad Cities Area, Rock Island, IL
Contracting Activity: Dept of Veterans Affairs, 438-Sioux Falls VA Medical Center

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–22979 Filed 9–22–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 24, 2016.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0074. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0074, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Deliver/Courier at the same address; or through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Steven A. Haidar, Attorney-Advisor, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5611; email: *shaidar@cftc.gov,* and refer to OMB Control No. 3038–0074.

SUPPLEMENTARY INFORMATION:

Title: Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038–0074). This is a request for extension of a currently approved information collection.

Abstract: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added new section 5h to the Commodity Exchange Act (CEA) to impose requirements concerning the registration and operation of SEFs, which the Commission has incorporated in part 37 of its regulations.[1] These information collections are needed for the Commission to ensure that SEFs registered with the Commission (and entities applying for SEF registration) comply with these requirements. Among other requirements, part 37 of the Commission's regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to comply with 15 enumerated core principles.[2]

The Commission initially estimated that there would be 35 SEFs registered with the Commission, but in the 60-Day Notice of Intent to Renew Collection 3038–0074 (60-Day Renewal Notice), the Commission stated that 22 SEFs, rather than 35 SEFs as initially estimated, were registered with the Commission.[3] However, since the publication of the 60-Day Renewal Notice, the Commission has granted permanent registration to an additional SEF, for a total of 23 registered SEFs.[4] Accordingly, the Commisison is revising the below burden statement from the 60-Day Renewal Notice to account for the increase from 22 to 23 registered SEFs.

The Commission did not receive any relevant comments on the 60-Day Renewal Notice.

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[1] In general, this OMB Control Number covers all information collections in part 37 of the Commission's regulations, including Subpart A and the SEF core principles (*i.e.,* Subparts B and C). However, any information collections related to § 37.10 of the Commission's regulations are not included under this control number and are instead subject to a separate information collection with OMB Control Number 3038–0099 (Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade).

[2] These 15 core principles establish standards with respect to SEFs: Enforcing rules; listing contracts for trading that are not readily susceptible to manipulation; monitoring trading to prevent market manipulation; obtaining information; adopting position limits or position accountability levels; adopting rules to enforce financial integrity of swaps transactions entered on or through the SEF; adopting rules to provide for the exercise of emergency authority, in consultation with the Commission; making public information regarding prices and volume on a timely basis; maintaining records of all activities of the business of the contract market in a form and manner acceptable to the Commission for five years; avoiding rules that result in unreasonable restraints of trade or anticompetitive burden on trading; enforcing rules to minimize conflicts of interest in its decision-making process; maintaining adequate financial resources; establishing system safeguards; and designating a chief compliance officer.

[3] *See* 81 FR 47779, 47780 (July 22, 2016).

[4] Commission granted permanent registration to the additional SEF on August 23, 2016.

Burden Statement: The Commission estimates that a respondent's burden for this information collection will be (i) 1,000 on-going annual burden hours per respondent registered SEF and (ii) 300 burden hours per respondent applicant for permanent SEF registration.[5]

Annual Burden Hours for Registered SEFs

Respondents/Affected Entities:	Registered SEFs.
Estimated number of respondents:	23. [1]
Estimated annual burden hours per respondent:	1,000 burden hours.
Estimated total annual burden on respondents:	23,000 hours. [2]
Frequency of collection:	Per trade day. [3]

Burden Hours for Applicants for Permanent SEF Registration

Respondents/Affected Entities:	Applicants for SEF Registration.
Estimated number of respondents:	4. [4]
Estimated annual burden hours per respondent:	300 burden hours.
Estimated total annual burden on respondents:	1,200 burden hours. [5]
Frequency of collection:	Initial registration.

[1] In the part 37 final rule release, the Commission estimated that there would be 35 SEFs. *See* 78 FR 33476, 33549 (June 4, 2013). The Commission, however, notes that 23 SEFs are currently registered with the Commission. In the 60-Day Renewal Notice, the Commission stated that there were 22 then-registered SEFs; however, since the pulication of the 60-Day Renewal Notice, the Commission has granted permanent registration to an additional SEF. Accordingly, the revised aggregate burden hour estimate accounts for both the increased annual burden hours estimate to 1,000 hours per SEF as well as the revised number of SEFs to 23.

[2] 1,000 average annual burden hours per respondent SEF × 23 registered SEFs = 23,000 total burden hours for all registered SEFs.

[3] The Commission notes that registered SEFs also are required to provide four quarterly reports and one annual report as part of their annual information collection obligations.

[4] Based on the number of applicants that have applied for permanent SEF registration since the Commission first granted permanent registration status to SEFs on January 22, 2016, the Commission expects to receive four applications per year for permanent SEF registration.

[5] 300 average initial burden hours per respondent SEF applicant × 4 anticipated SEF applicants = 1,200 total burden hours incurred for all anticipated SEF applicants per year.

Authority 44 U.S.C. 3501 *et seq.*

Dated: September 20, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–22957 Filed 9–22–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0093]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense (OSD) proposes to alter a system of records, DUSDI 01–DoD, "Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System," last published at 81 FR 31614, May 19, 2016.

This system of records exists to: Analyze, monitor, and audit insider threat information for insider threat detection and mitigation within the DoD on threats that persons who have or had been granted eligibility for access to classified information or eligibility to hold sensitive positions may pose to DoD and U.S. Government installations, facilities, personnel, missions, or resources. The system of records will support the DITMAC and DoD Component insider threat programs, enable the identification of systemic insider threat issues and challenges, and provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential insider threats. It will assist in identifying best practices among other Federal Government insider threat programs, through the use of existing DoD resources and functions and by leveraging existing authorities, policies, programs, systems, and architectures.

This alteration reflects a change to the categories of individuals by removing the phrase: And who have exhibited actual, probable, or possible indications of insider threat behaviors or activities. Public Law 112–81, 10 U.S.C. 2224 note, Insider Threat Detection, requires the Department to detect and prevent insider threats in order to protect sensitive information and information systems. This authority requires the Department to employ anomaly detection techniques, which logically require ingestion of non-anomalous information in order to identify anomalous information. Accordingly, the individuals subject to the DoD Insider Threat program are those individuals who had or have been granted eligibility or access to classified information.

DATES: Comments will be accepted on or before October 24, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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[5] The Commission notes that SEFs did not exist prior to either the Dodd-Frank Act or the Commission's original submission of this OMB Control Number, and so the Commission is revising its burden estimate now that it has had the opportunity to observe SEFs' operations and receive feedback from market participants. The Commission notes that while its revised estimate of 1,000 annual burden hours per respondent SEF is an increase from its original estimate of 308 burden hours per respondent SEF, the Commission's estimate does not represent any new information collection burdens or adjustments to existing information collections. *See* 78 FR 33476, 33551 (June 4, 2013) (discussing the Commission's original PRA estimate).

The Commission further notes that the separate estimate of 300 burden hours for applicants for permanent SEF registration does not represent new information collection burdens or adjustments to existing information collections. Rather, while the Commission did consider the burden hours related to the SEF application process in its original information collection submission for this OMB Control Number, the Commission did not explicitly distinguish the burden hours related to the registration process for SEF applicants from the Commission's estimate of the on-going annual burden hours for registered SEFs, but rather provided an aggregate number. *See id.* at 33549–51. For the sake of clarity, the Commission is explicitly distinguishing in this notice between the burden hours for registered SEFs and for applicants for SEF registration.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, Chief of the Defense Privacy, Civil Liberties, and Transparency Division, 703–571–0070.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 2, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000, 65 FR 77677).

The Department received comments from five submitters related to the initial publication of the Privacy Act System of Records Notice for the Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System. A response to the comments received has been posted to the electronic docket under docket ID DOD–2016–OS–0060 on *http://www.regulations.gov.*

Although a change is being published to the categories of individuals, this resulted from further review of the published system of records notice and not the comments received.

Dated: September 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDI 01–DoD

SYSTEM NAME:

Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System (May 19, 2016, 81 FR 31614).

CHANGES:

1. In the **Federal Register** of May 19, 2016, in FR Doc. 2016–11703, on page 31615, in the first column, lines 5 through 8 of the first paragraph under the section title Categories of Individuals Covered by the System, remove the phrase ", and who have exhibited actual, probable, or possible indications of insider threat behaviors or activities".

2. In the **Federal Register** of May 19, 2016, in FR Doc. 2016–11703, on page 31615, in the second column, lines 6 through 8 of the second paragraph under the section title Categories of Individuals Covered by the System, remove the phrase ", and who have exhibited actual, probable, or possible indications of insider threat behaviors or activities".

3. In the **Federal Register** of May 19, 2016, in FR Doc. 2016–11703, on page 31615, in the second column, lines 10 through 12 of the third paragraph under the section title Categories of Individuals Covered by the System, remove the phrase ", who have exhibited actual, probable, or possible indications of insider threat behaviors or activities".

[FR Doc. 2016–22903 Filed 9–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 6, 2016, 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of May Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
  - ○ Draft Recommendation 16–02: Priorities for the President's Fiscal Year 2018 Budget Request
    - ■ Public Comments on Recommendation
    - ■ Board Comments on Recommendation
  - ○ Update on Annual Executive Planning and Leadership Training Session
- EM SSAB Chairs Meeting Update
- Election of Chair and Vice Chair
- Adoption of Fiscal Year 2017 Work Plan
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on September 16, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–22927 Filed 9–22–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 22, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Sarah Olexsak, Office of Energy Efficiency and Renewable Energy (EE–3V), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121, or by fax at 202–586–1600, or by email at *WorkplaceCharging@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarah Olexsak, Office of Energy Efficiency and Renewable Energy (EE–3V), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121, 202–586–8055, *WorkplaceCharging@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy is proposing to extend an information collection, pursuant to the Paperwork Reduction Act of 1995. The approved collection is being used to develop information that enables DOE to generate an annual report that provides an update on the Workplace Charging Challenge program partners' activities, as well as to report on metrics DOE is evaluating related to energy consumption, costs, numbers of employers in the program, and best practices that can be identified for the purpose of helping others take steps to deploy electric vehicle charging infrastructure. DOE is not proposing to expand the scope of the existing information collection effort.

This information collection request contains: (1) OMB No. 1910–5174; (2) Information Collection Request Title: Workplace Charging Challenge; (3) Type of Request: Renewal; (4) Purpose: DOE's Vehicle Technologies Office (VTO) has developed a voluntary initiative, the EV Everywhere Workplace Charging Challenge. This initiative, launched in January 2013, aims to increase the number of U.S. employers offering workplace charging for plug-in electric vehicles (PEVs) to their employees. Participating employers may sign on as Partners to signal their commitment to workplace charging and otherwise promote workplace charging. As designed, the initiative is intended to benefit both employees and employers.

The goal of the Workplace Charging Challenge is to increase to over 500 the number of employers offering workplace charging to their U.S. employees by the end of fiscal year 2018, the scheduled end of the program. Individual employers that make available at least one electric vehicle supply equipment (EVSE), or charger, to their employees at one major employer location count towards this goal, regardless of whether or not the employer is a partner in the Workplace Charging Challenge.

As part of this program, DOE will continue to conduct outreach to deploy workplace charging, provide technical assistance to support employers' workplace charging programs, and identify specific success stories, lessons learned, and best practices employers have deployed, thereby increasing the value of additional workplace charging programs, and facilitating the deployment EVSE. The effort is part of the larger EV Everywhere Grand Challenge, and as the Grand Challenge by necessity incorporates a deployment component, DOE uses its experience and expertise through the VTO Clean Cities Program to educate the public about PEVs, as well as help identify potential workplace charging barriers and the means to remove such barriers.

The Challenge does not endeavor to engage an exhaustive number of employers, but rather will continue to work with self-identified employers committed to leading the way in reducing petroleum consumption through the deployment of PEVs and associated charging infrastructure.

In January 2013, relying on employers' public records and communications, DOE began identifying employers that might be interested in becoming voluntary partners to the Workplace Challenge Program. To measure progress towards the Workplace Charging Challenge goal of more than 500 employers through fiscal year 2018, DOE will continue to monitor some employers directly, and others through data DOE can gather from available online resources, including the Alternative Fuels Data Center. For those employers DOE is monitoring directly, DOE will continue to develop an annual progress update and will publish the generalized results gathered. To generate this annual update, DOE will collect annually from these Workplace Charging Challenge Partners, or employers, data and narratives associated with their PEV charging program and infrastructure.

The principal objective of collecting the information DOE would like to continue to gather through the Challenge is to allow DOE to develop an objective assessment and estimate of the number of U.S. employers that have established a workplace charging program or otherwise installed EVSE, and to document specific information associated with the offering of such a program to employees. Information requested would continue to be used to establish basic information for Partner employers, which will then be used for future comparisons and analysis of instituted programs and policies. A designated representative for each participating Partner will provide the requested information. The intended respondent is expected to be aware of relevant aspects of the company's charging infrastructure and program if such exists, such that the gathering of information is not expected to be very resource consuming. DOE will continue to compile and issue an annual progress update that would provide an update on the Workplace Charging Challenge program partners' activities, as well as report on metrics DOE is evaluating related to energy consumption, costs, numbers of employers in the program, and best practices that can be identified for the purpose of helping others take steps to deploy charging infrastructure. The following are reports and documents available to date:

- Workplace Charging Challenge 2014 Progress Update: Employers Take Charge
- Workplace Charging Challenge Mid-Program Review: Employees Plug In
- Plug-In Electric Vehicle Handbook for Workplace Charging Hosts
- Install and Manage Workplace Charging
- Costs Associated With Non-Residential Electric Vehicle Supply Equipment

The Challenge effort will continue to rely on data the Partners will provide via an online response tool. The data collection would continue to address the following topic areas: (1) Charging infrastructure and use; (2) employee PEV ownership and PEV knowledge; and (3) feedback on the Challenge.

The data would continue to be compiled for the purpose of assessing and setting forth in the annual progress updates the Workplace Charging Challenge program's impact in terms of increasing both the number of employers offering workplace charging and the deployment of EVSEs and PEVs.

As is done presently, the data and subsequent analyses will allow DOE to compare historical records dynamically, and provide the opportunity for DOE to determine annual progress toward Workplace Charging Challenge goals. Calculation of progress and impacts will continue to be undertaken on an annual basis.

The Workplace Charging Challenge program is targeted at U.S. employers. Providing initial baseline information for each participating employer, which occurs only once, is expected to take 1.5 hours. Follow-up questions and clarifications for the purpose of ensuring accurate analyses may take up to 3.5 hours; (5) Annual Estimated Number of Respondents: 400; (6) Annual Estimated Number of Total Responses: 400; (7) Annual Estimated Number of Burden Hours: 2,000; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: There is no cost associated with reporting and recordkeeping.

Statutory Authority: 42 U.S.C. 13233; 42 U.S.C. 13252(a)–(b); 42 U.S.C. 13255.

Issued in Washington, DC, on September 16, 2016.

Michael R. Berube,

Director, Vehicle Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–22975 Filed 9–22–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Public Scoping, Request for Comment, and Announcement of Public Scoping Meeting for the U.S. Department of Energy Environmental Assessment for Project Icebreaker (DOE/EA–2045)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public scoping, request for comment, and announcement of public scoping meeting.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to authorize the expenditure of federal funding for the design, construction, operation, maintenance, and decommissioning of "Project Icebreaker," a 20-megawatt offshore wind renewable energy project that would be located in Lake Erie, approximately 8 miles off Cleveland, Ohio. The proposed project would consist of up to six wind turbine generators and the necessary electrical transmission facilities (*i.e.* underwater and underground cable) to connect to the Cleveland Public Power Lake Road Substation. The Army Corps of Engineers (USACE) anticipates receiving an application pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for the proposed project. The U.S. Coast Guard (USCG) is responsible for reviewing impacts related to navigation and the USCG mission.

Pursuant to the requirements of the National Environmental Policy Act (NEPA), DOE is preparing an Environmental Assessment (EA) to identify and analyze potential impacts to the human environment that may occur if DOE authorizes the expenditure of federal funding in support of Project Icebreaker. The USACE and the USCG are cooperating agencies in preparation of the EA. DOE is requesting public input on the scope of the EA for Project Icebreaker.

The notice of public scoping for the EA and a description of the proposed project is available for review at: *www.energy.gov/node/2001046.*

DATES:

Meeting: DOE will hold a public meeting on September 28, 2016 from 4:00 p.m. to 7:00 p.m. in Lakewood, Ohio.

Comments: Comments regarding scoping must be received on or before October 21, 2016.

ADDRESSES:

Meeting: The public meeting will be held at the Lakewood Park Woman's Club Pavilion, 14532 Lake Ave, Lakewood, Ohio 44107.

Written Comments: Written comments should be sent to Roak Parker at U.S. Department of Energy, 15013 Denver West Parkway, Golden, CO 80401, or by email to *ProjectIcebreaker@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Roak Parker at *ProjectIcebreaker@ee.doe.gov.* The notice is available for viewing at: *www.energy.gov/node/2001046.*

Statutory Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Issued in Golden, CO, on September 14, 2016.

Lori A. Gray,

NEPA Division Director, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2016–22973 Filed 9–22–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0246; FRL–9952–98–OAR]

Proposed Information Collection Request; Comment Request; Information Requirements for New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Information Requirements for New Marine Compression Ignition Engines at or Above 30 Liters per Cylinder" (EPA ICR No. 2345.04, OMB Control No. 2060–0641) to the Office of Management and Budget (OMB) for review and

approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 22, 2016.

ADDRESSES: Submit your comments, referencing the Docket ID No. EPA–HQ–OAR–2013–0246, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6405A, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: For this ICR, EPA is seeking a revision to an existing package with a three year extension. Title II of the Clean Air Act, (42 U.S.C. 7521 *et seq.;* CAA), charges the Environmental Protection Agency (EPA) with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Under this ICR, EPA collects information necessary to (1) issue certificates of compliance with emission statements, and (2) verify compliance with various programs and regulatory provisions pertaining to marine compression-ignition engines with a specific engine displacement at or above 30 liters per cylinder, also referred to as Category 3 engines. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. This information is organized by "engine family" groups expected to have similar emission characteristics. There are recordkeeping requirements of up to eight years. The Act also mandates EPA to verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these engines comply with emission standards throughout their useful lives.

Under the Production Line Testing Program ("PLT Program"), manufacturers of Category 3 engines are required to test each engine at the sea trial of the vessel in which the engine is installed or within the first 300 hours of operation, whichever comes first. This self-audit program allows manufacturers to monitor compliance and minimize the cost of correcting errors through early detection. In addition, owners and operators of marine vessels with Category 3 engines must record certain information and send minimal annual notifications to EPA to show that engine maintenance and adjustments have not caused engines to be noncompliant. From time to time, EPA may test in-use engines to verify compliance with emission standards throughout the marine engine's useful life and may ask for information about the engine family to be tested.

The information requested is collected by the Diesel Engine Compliance Center (DECC), Compliance Division (CD), Office of Transportation and Air Quality, Office of Air and Radiation, EPA. Besides DECC and CD, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes.

Proprietary information is kept confidential in accordance with the Freedom of Information Act (FOIA), EPA regulations at 40 CFR parts 2 and 1042.915, and class determinations issued by EPA's Office of General Counsel. Non-confidential business information may be disclosed as requested under FOIA. That information may be used by trade associations, environmental groups, and the public. Most of the information is collected in electronic format and stored in CD's databases.

Form Numbers: 5900–90 (Annual Production Report); 5900–297 (PLT CumSum Report); 5900–298 (PLT Non-CumSum Report); 5900–124 (Application for Certification).

Respondents/Affected Entities: Respondents are manufacturers of marine compression-ignition engines above 30 liters per cylinder and the owners or operators of the vessels in which those engines are installed, within the following North American Industry Classification System (NAICS) codes: 333618 (Other Engine Equipment Manufacturing), 336611 (Manufacturers of Marine Vessels); 811310 (Engine Repair and Maintenance); 483 (Water transportation, freight and passenger).

Respondent's Obligation to Respond: Required to obtain or retain a benefit. Manufacturers must respond to this collection if they wish to sell and/or operate their Category 3 engines in the U.S., as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521) and 40 CFR part 1042. Certification reporting is mandatory (Section 206(a) of CAA (42 U.S.C. 7521) and 40 CFR part 1042, subpart C). PLT reporting is mandatory (Section 206(b)(1) of CAA and 40 CFR part 1042, subpart D).

Estimated Number of Respondents: 201 (total, including engine manufacturers, owners and operators).

Frequency of Response: Quarterly, Annually, On Occasion, depending on the type of response.

Total Estimated Burden: 24,813 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $1,931,765 (per year), includes an estimated $734,588 annualized capital or maintenance and operational costs.

Changes in Estimates: To date, there are no changes in the total estimated respondent burden compared with the ICR currently approved by OMB. However, EPA is evaluating information that may lead to a change in the estimates. After EPA has evaluated this information, burden estimates may slightly decrease due to the fact that EPA has received fewer applications for certification of Category 3 engine families than previously estimated. Cost estimates may increase due to inflation and labor rate changes.

Dated: September 19, 2016.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–23149 Filed 9–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0511; FRL–9952–95]

Certain New Chemicals or Significant New Uses; Statements of Findings for September 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from June 22, 2016 to September 19, 2016.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *Schweer.Greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0511 is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from June 22, 2016 to September 19, 2016.

III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term "conditions of use" is defined in TSCA section 3 to mean "the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of."

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose, and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use, must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance, or before manufacture or processing, for the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of "not likely to present an unreasonable risk of injury to health or the environment" may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Web site link to EPA's decision document describing the basis of the "not likely to present an unreasonable risk" finding made by EPA under TSCA section 5(a)(3)(C).

EPA Case Number: J–16–0006; *Chemical identity: Trichoderma reesei* modified (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016–08/documents/j-16–0006_determination_non-cbi_final.pdf.*

EPA Case Number: J–16–0010; *Chemical identity: Saccharomyces cerevisiae* modified (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016–08/documents/j-16–0010_determination_non-cbi_final.pdf.*

EPA Case Number: J–16–0011–0016; *Chemical identity:* Biofuel Producing Organism (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/j-16-0011-0016_determination_non-cbi_final.pdf.*

EPA Case Number: J–16–0017; *Chemical identity: Saccharomyces cerevisiae* modified (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/j-16-0017_determination_non-cbi_final.pdf.*

EPA Case Number: J–16–0018; *Chemical identity: Saccharomyces cerevisiae* modified (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/j-16-0018_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0281; *Chemical identity:* Fatty alcohols-dimers, trimers, polymers (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-07/documents/sanitized_p160281_ogc_reviewed_signature_version_07152016.pdf.*

EPA Case Number: P–16–0292; *Chemical identity:* Depolymerized waste plastics (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-07/documents/sanitized_p160292_final_determinationv2.pdf.*

EPA Case Number: P–16–0301; *Chemical identity:* Propyl silsesquioxanes, hydrogen-terminated (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-07/documents/sanitized_p160301_determination_post_ogc_review_07202016.pdf.*

EPA Case Number: P–16–0302; *Chemical identity:* Organic modified propyl silsesquioxane (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-07/documents/sanitized_p160302_determination_post_ogc_review_07202016.pdf.*

EPA Case Number: P–16–0340; *Chemical identity:* Glycerides, C_{8-18} and C_{18} unsaturated, from fermentation (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0340_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0343–0344; *Chemical identity:* Modified urethane polymer (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0343-0344_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0348; *Chemical identity:* Polypentaerythritol, mixed esters with linear and branched monoacids (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-00348_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0351; *Chemical identity:* Glycerides, C_{14-18} and C_{16}–C_{18} unsaturated, from fermentation (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0351_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0366; *Chemical identity:* Blocked polyisocyanate (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0366_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0373; *Chemical identity:* Tris(alkyloxyphenyl)triazine compounds (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-00373_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0391; *Chemical identity:* Polyester polyol polymer with aliphatic isocyanate and phenol derivates (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0391_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0392; *Chemical identity:* Modified vegetable oil (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0392_determination_non-cbi_final.pdf.*

EPA Case Number: P–16–0466; *Chemical identity:* 2,5-Furandione, telomer with ethenylbenzene and (alkylethyl)benzene, amides with polyethylene-polypropylene glycol aminoalkyl Me ether, alkali salts (generic name); *Web site link: https://www.epa.gov/sites/production/files/2016-08/documents/p-16-0466_determination_non-cbi_final.pdf.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 19, 2016.

Wendy Cleland-Hamnett,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–22972 Filed 9–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–91–Region 1]

2016 Fall Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the joint 2016 Fall Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to regional haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on November 17, 2016 starting at 9:15 a.m. and ending at 4:00 p.m.

Location: The Melrose Georgetown Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037, 202–955–6400.

FOR FURTHER INFORMATION CONTACT:

For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street NW., Suite 322, Washington, DC 20001; (202) 508–3840; email: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by email: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: September 13, 2016.

H. Curtis Spalding,

Regional Administrator, Region I.

[FR Doc. 2016–22969 Filed 9–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–1025]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the Committee). The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including underserved populations, such as Native Americans, persons living in rural areas, older persons, people with disabilities, and persons for whom English is not their primary language) in proceedings before the Commission.

DATES: October 14, 2016, 9:00 a.m. to 3:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room TW–C305, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer of the Committee, (202) 418–2809 (voice or Relay); email *Scott.Marshall@fcc.gov,* or the Deputy Designated Federal Officer of the Committee, Beau Finley, (202) 418–7835 (voice); email: *Robert.finley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 16–1025, released September 12, 2016, announcing the Agenda, Date, and Time of the Committee's Next Meeting.

Meeting Agenda

At its October 14, 2016 meeting, the Committee is expected to consider a recommendation from its No Surprise Billing Task Force regarding the clarity of charges at point of sale and on bills.

The Committee will also receive briefings from Commission staff on issues of interest to the Committee. A limited amount of time will be available for comments from the public. If time permits, the public may ask questions of presenters via the email address *livequestions@fcc.gov* or via Twitter using the hashtag #fcclive. The public may also follow the meeting on Twitter @fcc or via the Commission's Facebook page at *www.facebook.com/fcc.* Alternatively, members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided below.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and committee roster will be provided on site. Meetings of the Committee are also broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may not be possible to fill. To request an accommodation, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

D'wana Terry,

Associate Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2016–22946 Filed 9–22–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–1039]

Elimination of Certain System-Generated Paper Correspondence Notices as Initial Step Toward Providing Electronic Access to Correspondence Notices

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau (Bureaus) announce the elimination of certain paper correspondence notices related to applications, licenses, and antenna structure registrations currently generated by the Commission's Universal Licensing System and Antenna Structure Registration System.

DATES: Effective September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Bucher at (717) 338–2656 or via email at *Mary.Bucher@fcc.gov* or Cyndi Thomas at (202) 418–2018 or via email at *Cyndi.Thomas@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureaus' Public Notice (*Notice*), DA 16–1039, released on September 14, 2016. The complete text of this document is available for viewing via the Commission's EDOCS Web site by entering the DA number, DA 16–1039. The complete text of the document is also available for public inspection and copying during business hours at the FCC Reference Information Center on the Court Yard Level (Room CY–A257), 445 12th Street SW., Washington, DC (telephone 202–418–0270; TTY 202–418–2555). Alternate formats of this Public Notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY), or by sending an email to *fcc504@fcc.gov.*

In the Notice, the Wireless Telecommunications Bureau (WTB) and the Public Safety and Homeland

Security Bureau (PSHSB) (collectively "Bureaus") announce the elimination of certain paper correspondence notices related to applications, licenses, and antenna structure registrations currently generated by the Commission's Universal Licensing System (ULS) and Antenna Structure Registration (ASR) System and mailed to system users through the U.S. Postal Service. This action marks another step in the Commission's process reform efforts, which recommended eliminating paper copies of correspondence, and allows the Bureaus to streamline the Commission's wireless service licensing and antenna structure registration processes, in advance of the transition of initial services to a modernized ULS platform. The action also builds on earlier efforts to transition from paper to electronic records in the context of official authorizations issued in ULS and ASR.

The paper correspondence notices that the Bureaus are eliminating provide information about Bureau actions that do not require a response from a system user and the information from those notices is available by other means in either ULS or the ASR System. Taking this step now—reducing the number of notices generated by the Commission's systems—will save money in terms of staff resources, paper supplies, and mailing costs. The Bureaus are not eliminating certain paper notices that provide information about Commission actions or approaching deadlines that require action from the system user. As explained in the Notice, the Commission ultimately anticipates providing electronic access to these system-generated correspondence notices with the transition to the modernized ULS platform.

By this Notice, as discussed in detail below, the Bureaus announce the following actions with respect to system-generated notifications:

- Effective upon publication of this Notice in the **Federal Register**, the Bureaus eliminate seven ULS-generated correspondence notices from ULS, and those notices will not be migrated to the Commission's new wireless licensing system. The Bureaus eliminate seven ASR-generated correspondence notices from the ASR System.
- The Bureaus retain 15 ULS-generated correspondence notices in ULS. These notices will also be migrated to the Commission's new wireless licensing system with each service as the service is deployed in the new system. The Bureaus retain three ASR-generated correspondence notices.
- The Bureaus retain the ULS-generated license cancellation notice in ULS, but that notice will not be migrated to the Commission's new licensing system. Electronic safeguards will be implemented in the new licensing system to help prevent licensees from inadvertently cancelling a license.

The new procedures become effective upon publication of this Notice in the **Federal Register**. For promulgating "rules of agency organization, procedure, or practice"—so-called "procedural rules"—Section 4 of the Administrative Procedure Act (APA) exempts agencies like the Federal Communications Commission from the general APA requirements to provide the public with advance notice and opportunity for comment. 5 U.S.C. 553(b)(A). Section 3(a) of the APA requires agencies to publish their "rules of procedure" in the **Federal Register**, 5 U.S.C. 552(a)(1)(C), and Section 4(d) generally requires an agency to publish its substantive rules 30 days prior to the date on which the rules become effective, id. § 553(d). Because Section 4(d) expressly applies to substantive rules and not to procedural rules, the requirement to publish the new procedures with respect to system-generated correspondence notices 30 days before those procedures become effective is inapplicable in this proceeding.

Background

The Commission implemented ULS and the ASR System nearly 20 years ago to facilitate electronic filing for all wireless licensing and antenna structure registration applications as well as electronic access to authorizations. The systems also improve data accuracy through automated checking of applications and enhanced electronic access to license and registration database information. In fact, the two systems receive hundreds of thousands of applications electronically each year and the systems currently store over two million active authorizations. To facilitate communication between the Commission and system users with regard to the status of applications and authorizations, the Commission developed several notices that the systems generate. Correspondence notices are generated from forms that are assigned FCC Form numbers. Notices are assigned form numbers depending on whether they are generated for WTB services (600 series forms) or PSHSB services (1400 series forms). Notices that are being eliminated are listed in Attachment A and notices that are being retained are listed in Attachment B to this Notice. Currently, ULS generates 23 correspondence notices and the ASR System generates 10 correspondence notices.

These system-generated notices provide a range of information. Once an application is filed, ULS or the ASR System may generate notices ranging from a notice stating that the application has been received to a notice dismissing the application, which could result in termination of an authorization. Both systems also generate notices from data associated with authorizations, *e.g.*, notices reminding licensees and registrants of approaching construction deadlines. Notices may include automated system messages or individual messages manually drafted by Commission staff, depending on the reason for generating a notice. Each notice is then printed on paper, placed in a postage-paid envelope, and mailed through the U.S. Postal System to system users. In some cases, a paper copy of the same notice is mailed to as many as three individuals or entities.

Discussion

Electronic Access to Correspondence Notices

To implement the FCC Process Reform recommendation to eliminate paper copies of correspondence, the Commission anticipates using a multi-phased process for reducing the overall number of notices generated by its wireless licensing and antenna structure registration systems, and for moving toward options that would allow system users electronic access to system-generated correspondence notices. The first step in this process is addressed by this Notice and affects ULS and the ASR System. Further steps in the process toward electronic access, for licensing, would be implemented in the Commission's new wireless service licensing system.

As the Commission concluded in adopting final procedures for electronic access to official authorizations in both ULS and the ASR System, given the ease of access to the Internet, the ubiquitous availability of electronic documents, and the high adoption rate by consumers of electronic delivery of many other documents, as well as the near-term deployment of the Commission's new wireless licensing system, the Bureaus believe that the time is appropriate for moving toward modernizing the treatment of system-generated correspondence. Reducing the number of notices generated by the Commission's systems and moving to electronic access will save money in terms of staff resources, paper supplies, and mailing costs. Over the three-year period 2013–2015, ULS and the ASR

System together generated 708,940 correspondence notices that were each printed on paper, placed in a postage-paid envelope, and mailed through the U.S. Postal Service. The Bureaus also anticipate that making the correspondence notices available electronically will eliminate the risk of a notice getting lost or damaged in delivery.

The Bureaus initiate the Commission's phased-in process toward electronic access by first eliminating seven ULS-generated and seven ASR-generated correspondence notices. With respect to the remaining correspondence notices, as services are deployed in the new wireless licensing system, the Bureaus will initially continue the current process of mailing licensing system-generated notices to recipients through the U.S. Postal Service. After some or all services have been deployed in the new licensing system, the Commission anticipates reviewing options for allowing applicants and licensees electronic access to notices generated by that new system. The Commission also anticipates reviewing options for allowing applicants and registrants electronic access to ASR-generated notices. Finally, while we are eliminating a number of existing notices, the new wireless licensing system presents an opportunity for developing new electronic notifications that could provide information formerly included in eliminated notices, as well as other information not currently provided by ULS or the ASR System.

Notices Eliminated

All of the correspondence notices that the Bureaus are eliminating provide information about Bureau actions that do not require a response from a system user. In particular, because the information provided in these notices is readily available by some other means in either ULS or the ASR System, or because the reasons for initially developing the notices are no longer supported, we eliminate seven notices from ULS and seven notices from the ASR System. Some notices simply acknowledge that the systems have received an application. The Bureaus find this information redundant because today, an applicant can check ULS or the ASR System within a few days of filing an application to confirm that the relevant system has received the application.

ULS also generates notices that advise former aircraft or ship licensees that their authorizations have terminated and another party has obtained a license for the aircraft or ship. The ASR System informs a former owner of an antenna structure that an application has been processed to change the ownership of the antenna structure on a registration. The notices, in each of these cases, were developed to limit third parties from fraudulently cancelling or obtaining someone else's license or registration. Over the past several years, however, the Bureaus have found that fraudulent actions rarely, if ever, happen.

Both ULS and the ASR System also generate notices that acknowledge a licensee or registrant has associated, removed, or replaced an FCC Registration Number (FRN) with respect to a license or registration. Again, these notifications were developed to limit third parties from tampering with the association of an FRN to a license or registration. Today, however, because licensees and registrants associate, remove, or replace an FRN with respect to an authorization only by electronic filings, a third party could not submit an application manually to tamper with the association between an FRN and a license or registration. The Bureaus therefore eliminate these six notices. The Bureaus further note that in 2004, WTB issued public notices announcing that it would send these FRN notifications first by email, and where the applicant did not provide an email address, by mail through the U.S. Postal Service. Because we eliminate the notices, we will no longer send FRN notices by email.

Finally, the Bureaus will not migrate the notices that we are eliminating in ULS to the Commission's new wireless licensing system. As the new wireless licensing system is deployed and as enhancements are made to the ASR System, the Commission may consider developing electronic notifications that provide information similar to the information currently included in these notices, where, for example a system user elects to receive the information by email or text message.

Notices Retained

Return, Dismissal, Termination Pending, and Courtesy Reminder Notices. The Bureaus retain 15 correspondence notices in ULS and three notices in the ASR System because they provide (1) information about Commission actions that require a response from the applicant; or (2) information about approaching deadlines that require action from the applicant, licensee, or registrant. The Bureaus will also migrate the notices that they are retaining in ULS to the new wireless licensing system as services are deployed in that system. In particular, the Bureaus retain notices that return an application for correction or additional information, as well as notices that dismiss an application. The Bureaus also retain "courtesy" notices that remind a licensee or registrant that a construction or renewal deadline is approaching, as well as notices warning a licensee that its license has been placed in termination pending status.

The Bureaus explain that notices that fall within these categories are often critical to an applicant that intends to continue prosecuting an application, as well as a licensee or registrant that intends to retain an authorization. The Bureaus further note that the Commission has addressed these types of processes in adopting policies for ULS and the ASR System. In 1999, the Commission developed a unified policy for dismissing and returning applications in both ULS and the ASR System. The system-generated return and dismissal notices are the mechanisms by which the Bureaus implemented this policy.

In adopting rules governing license application procedures for ULS, the Commission also stated that, as a convenience to licensees, ULS would issue construction notifications prior to construction deadlines as well as renewal reminder notices prior to license expiration dates. The Commission further stated that, for the time being, these types of courtesy reminder notices would be sent by mail. In particular, at the time it adopted ULS rules and procedures, the Commission rejected delivery of notices by email, instead deciding that licensees would continue to be notified of official Commission action by regular mail only. The Commission noted, however, that it was "optimistic that a system of electronic communication at some time in the future may offer a substantial increase in efficiency and paper reduction" and that "we may revisit this issue at a later time should circumstances warrant." Based on general requirements established by the Commission in that same proceeding for its automated termination procedures, ULS generates on the same day correspondence notices as well as a public notice warning licensees that they have not filed construction notifications in a timely manner and, absent confirmation of timely construction, termination of the licenses becomes final.

The Bureaus further explain that the Commission found that these policies would produce staff efficiencies, lessen the burden on applicants and licensees, increase the accuracy of the ULS database, and promote efficient spectrum use. The Bureaus also note, importantly, that the date on a return or dismissal notice, as well as a termination pending notice, is the date on which the period for seeking reconsideration begins. For these reasons, the Bureaus retain notices that require responses from system users because of an action taken by the Bureaus or because of an approaching renewal or construction deadline.

The Bureaus also retain four notices currently generated by ULS that the Commission anticipates moving to its Electronic Authorization process in the new wireless licensing system. Three of these notices acknowledge the addition, modification, or deletion of a registered site on an authorization in the 3650–3700 MHz Service, as well as in the Non-Public Safety and Public Safety Intelligent Transportation Services. The fourth notice acknowledges the addition of a registered link on an authorization in the Millimeter Wave 70/80/90 GHz Service. The Bureaus retain these notices because they currently confirm modifications to registered sites or links on an authorization in these services. Once moved to the Commission's Electronic Authorization process, the Bureaus anticipate that the registration notices will be available electronically, unless a licensee notifies the Commission that it wishes to receive the notice on paper through the U.S. Postal Service.

License Cancellation and Antenna Structure Registration Cancellation and Termination Notice

The Bureaus also retain license cancellation notices in ULS. For the following reasons, however, the Bureaus will not migrate the license cancellation notice to the new wireless licensing system, and the Bureaus eliminate the cancellation and termination notices in the ASR System. After an application to cancel a license is granted, ULS generates a notice that is mailed to the licensee stating that the license referenced in the notice has been cancelled. In the ASR System, registrations have two statuses—granted and constructed. If a registrant cancels a registration before the antenna structure is constructed, the ASR System automatically generates a cancellation notice. If the registrant terminates a registration after the antenna structure is constructed, staff triggers the ASR System to generate a termination notice. The intent of these notices is to allow the licensee or registrant to take action if the license or registration is improperly cancelled by a third party, but in our experience, the vast majority of erroneous cancellations are filed by someone who was authorized to act on behalf of the licensee or registrant.

An inadvertent cancellation of a site-based license that goes unnoticed may, in many services, result in another party obtaining a license for the spectrum formerly authorized in the cancelled license. In addition, where another party has not obtained a license for the spectrum, a new application to replace the cancelled license may require frequency coordination and application fees, potentially resulting in significant costs. In auction services, an inadvertent cancellation might result in the loss of the authorization with return of the license spectrum to the Commission. To limit these consequences, the Bureaus retain license cancellation notices in ULS. The Bureaus will, however, eliminate the notice in services as they are deployed in the new wireless licensing system. Rather than generating license cancellation notices in the new licensing system, that system will offer electronic safeguards to prevent a licensee from inadvertently cancelling its license. For example, the new licensing system may create "pop-ups" asking the applicant if it is sure it wants to cancel the license at issue in the application and warning of the consequences of cancelling the authorization.

The Bureaus also eliminate the cancellation and termination notices in the ASR System. Parties filing registration applications do not obtain registrations through the Commission's competitive bidding procedures, do not pay application fees, and rarely, if ever, does someone other than an antenna structure owner cancel or terminate a registration. Where an antenna structure owner inadvertently cancels or terminates a registration, it simply files a new application.

Attachment A—Eliminated Correspondence Notices

The 600 series form numbers are assigned to notices generated for Wireless Telecommunications Bureau services and the 1400 series form numbers are assigned to notices generated for Public Safety and Homeland Security Bureau services.

ULS-GENERATED CORRESPONDENCE NOTICES ELIMINATED

Notice	Form No.
Notice of Aircraft Radio Station Termination	696A
Notice of Ship Radio Station Termination	696S
Ownership Notification Letter	602–A
Application Notification Letter	682/1404
FCC Registration Notification Letter (associate)	683A/1405
FCC Registration Notification Letter (remove)	683D/1405
FCC Registration Notification Letter (replace)	683R/1405

ASR-GENERATED CORRESPONDENCE NOTICES ELIMINATED

Notice	Form No.
Notice of ASR Change of Ownership	684
Notification of Application Receipt	675
FCC Registration Notification Letter (associate)	676A
FCC Registration Notification Letter (remove)	676D
FCC Registration Notification Letter (replace)	676R
Notice of ASR Cancellation	686
Notice of ASR Termination	687

Attachment B—Retained Correspondence Notices

The 600 series form numbers are assigned to notices generated for Wireless Telecommunications Bureau services and the 1400 series form numbers are assigned to notices generated for Public Safety and Homeland Security Bureau services.

ULS-GENERATED CORRESPONDENCE NOTICES RETAINED

Notice	Form No.
[Form 603] Application Dismissal Letter	603–D/1401
Notice of Return for Canadian Objections	690/1408
Notice of Immediate Return	693/1410
Notice of Immediate Dismissal	694/1411
Notice of Return	698/1414
Notice of Dismissal	699/1415
Notice of Authorization Grant-In-Part	700/1416
Notification of Consummation Reminder Letter	603–CR/1402
Construction/Coverage Deadline Notice of License Termination Pending Status	672/1403
Construction/Coverage Deadline Important Reminder Notice	691/1409
Renewal Reminder Notice	695/1412
3650–3700 MHz Service Registration Acceptance Letter	674
Intelligent Transportation Service (Non-Public Safety) Registration Acceptance Letter	677
Millimeter Wave 70/80/90 GHz Service Registration Acceptance Letter	678
Intelligent Transportation Service (Public Safety) Registration Acceptance Letter	1418
Notice of License Cancellation	697/1413

ASR-GENERATED CORRESPONDENCE NOTICES RETAINED

Form	Form No.
Notice of Return	688
Notice of Dismissal	689
ASR Construction Reminder	685

Federal Communications Commission.

Katherine M. Harris,

Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

[FR Doc. 2016–22934 Filed 9–22–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Reinstatement and Renewal; Submission for OMB Review; Comment Request (3064–0029)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the reinstatement and renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On July 11, 2016, (81 FR 44863), the FDIC requested comment for 60 days on a proposal to reinstate and renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the reinstatement and renewal of this collection, and again invites comment on this proposal.

DATES: Comments must be submitted on or before October 24, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Manny Cabeza, (202–898–3767), Counsel, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to reinstate and renew the following previously-approved collection of information:

1. *Title:* Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Numbers: FDIC 6120/06.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 40.

Estimated Time per Response: ½ hour.

Frequency of Response: On occasion.

Total estimated annual burden: 20 hours.

General Description of Collection: Insured state nonmember banks and state savings associations are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 20th day of September, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–22954 Filed 9–22–16; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0025, –0057, –0140 & –0176)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Currently, the FDIC is soliciting comment on the renewal of the information collections described below.

DATES: Comments must be submitted on or before November 22, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collections of information:

1. *Title:* Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: FDIC 6200/09.

Affected Public: Insured state nonmember banks wishing to exercise trust powers.

Annual Number of Respondents: 12.

BURDEN ESTIMATE

	Estimated number of responses	Hours per response	Frequency of response	Estimated burden
Eligible depository institutions	8	8	On Occasion	64
Not-eligible depository institutions	4	24	On Occasion	96
Totals	12			160

General Description of Collection: FDIC regulations (12 CFR 333.2) prohibit any insured State nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. Applicants use form FDIC 6200/09 to obtain FDIC's consent.

2. *Title:* Certified Statement for Quarterly Deposit Insurance Assessment.

OMB Number: 3064–0057.

Affected Public: FDIC-insured depository institutions.

Estimated Number of Respondents: 6,081.

Frequency of Response: Quarterly.

Estimated Annual Burden Hours per Response: 20 minutes.

Total Estimated Annual Burden: 8,108 hours.

General Description of Collection: The FDIC collects deposit insurance assessments on a quarterly basis. Each assessment is based on the institution's quarterly report of condition for the prior calendar quarter. The FDIC collects the quarterly payments by means of direct debits through the Automated Clearing House network. The collection dates for the first period of any given year (January through June) are June 30 and September 30 of the current year. The collection dates for the second period (July through December) are December 30 of the current year and March 30 of the following year. The information collection consists of recordkeeping associated with reviews by officials of the insured institutions to confirm that the assessment data are accurate and, in cases of inaccuracy, submission of corrected data.

The FDIC is requesting OMB to approve the change of the name of the collection from *Certified Statement for Semiannual Deposit Insurance Assessment* to *Quarterly Certified Statement Invoice for Deposit Insurance Assessment* to reflect the fact that deposit insurance assessment invoices are issued on a quarterly as opposed to a semiannual basis.

3. *Title:* Insurance Products Consumer Protections.

OMB Number: 3064–0140.

Affected Public: Insured State nonmember banks and savings associations that sell insurance products; persons who sell insurance products in or on behalf of insured State nonmember banks and savings associations.

BURDEN ESTIMATE

	Estimated number of responses	Average number of responses	Hours per response	Frequency of response	Estimated burden
Revising and Updating Disclosures	2,729	1	1	Annually	2,729
Disclosures to Consumers	2,729	240	0.1667	On Occasion	10,916
Total Estimated Burden					13,645

General Description: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

4. *Title:* Reverse Mortgage Products.

OMB Number: 3064–0176.

Affected Public: Insured State nonmember banks and savings associations.

Estimated Number of Respondents: 26.[1]

BURDEN ESTIMATE:

	Number of respondents	Hours per response	Frequency	Total burden hours
Implementation	1	40	Annually	40
Ongoing	25	8	Annually	200
Total	26			240

General Description: In August, 2010, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB) the National Credit Union Administration (NCUA) and the FDIC, issued guidance focusing on the need to provide adequate information to consumers about reverse mortgage products; to provide qualified independent counseling to consumers considering these products; and to avoid potential conflicts of interest. The guidance also addressed related policies, procedures, internal controls, and third party risk management. Prior to the effective date of the final guidance, the Agencies obtained PRA approval from OMB for the information collection requirements contained therein. These information collection requirements included implementation of policies and procedures, training, and program maintenance. The requirements are outlined below:

- Institutions offering reverse mortgages should have written policies and procedures that prohibit the practice of directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf.
- Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage.
- Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.
- Training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 20th day of September 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–22953 Filed 9–22–16; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:53 p.m. on Tuesday, September 20, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Thomas J. Curry (Comptroller of the Currency) and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

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[1] FDIC estimates that the number of respondents will be 26 (25 that have already implemented the program and now only face the ongoing compliance burden and one (1) as a placeholder for any new institution that would be required to implement the guidance requirements.

Dated: September 20, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–23050 Filed 9–21–16; 11:15 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–08]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an expired information collection known as "Community Support Requirements," which was assigned control number 2590–0005 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a reinstatement of the control number, which expired on February 29, 2016, for a period of three years.

DATES: Interested persons may submit comments on or before November 22, 2016.

ADDRESSES: Submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'Community Support Requirements, (No. 2016–N–08)' " by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "Community Support Requirements, (No. 2016–N–08)".

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Deattra D. Perkins, Senior Policy Analyst, Division of Housing Mission & Goals, *Deattra.Perkins@fhfa.gov,* (202) 649–3133; or Sylvia C. Martinez, Manager, Federal Home Loan Bank Housing and Community Investment Programs, Division of Housing Mission & Goals, *Sylvia.Martinez@fhfa.gov,* (202) 649–3301 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Director of FHFA to promulgate regulations establishing standards of community investment or service that Federal Home Loan Bank (Bank) member institutions must meet in order to maintain access to long-term Bank advances. Section 10(g)(2) of the Bank Act requires that, in establishing these community support requirements for Bank members, FHFA take into account factors such as the member's performance under the Community Reinvestment Act of 1977 (CRA) and record of lending to first-time homebuyers.[1] FHFA's community support regulation, which establishes standards and review criteria for determining compliance with section 10(g) of the Bank Act, is set forth at 12 CFR part 1290.

Part 1290 requires that each Bank member submit to FHFA biennially a completed Community Support Statement (Form 060), which contains several short questions the answers to which are used by FHFA to assess the responding member's compliance with the community support standards. Previously, this was accomplished by requiring approximately one-eighth of all members to submit a completed Form in each calendar quarter of a two-year review cycle. Under new streamlined procedures that FHFA is in the process of implementing, all members subject to community support review will be required to submit a completed Form 060 at approximately the same time every two years.

FHFA has revised Form 060 to reflect the new streamlined procedures. These revisions reduce slightly the number of questions on the Form and modify the formatting so that members will be able to complete and submit the Form online. In substance, the revised Form 060 is materially the same as the existing Form. In part I of the Form, a member that is subject to the CRA must record its most recent CRA rating and the year of that rating. Part II of the Form addresses a member's efforts to assist first-time homebuyers. A member may either record the number and dollar amount of mortgage loans made to first-time homebuyers in the previous or current calendar year (part II.A), or indicate the types of programs or activities it has undertaken to assist first-time homebuyers by checking selections from a list (part II.B), or do both. If a member has received a CRA rating of "Outstanding," it need not complete part II of the Form. A copy of the revised Form and related instructions appear at the end of this Notice.

Part 1290 also establishes the circumstances under which FHFA will restrict a member's access to long-term Bank advances for failure to meet the community support requirements. It permits Bank members whose access to long-term advances has been restricted to apply directly to FHFA to remove the restriction if certain criteria are met.

The OMB control number for the information collection contained in Form 060 and part 1290 is 2590–0005. The OMB clearance for this control number expired on February 29, 2016. The respondents are institutions that are Bank members.

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[1] 12 U.S.C. 1430(g)(1), (2).

B. Need for and Use of the Information Collection

This information collection is necessary to enable FHFA to determine whether Bank members satisfy the statutory and regulatory community support requirements and to ensure that, as required by statute, only Bank members that meet those requirements maintain continued access to long-term Bank advances.[2]

C. Burden Estimate

FHFA has analyzed the two facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 2,287 hours. The method FHFA used to determine the annual hour burden and associated cost for each facet of the information collection is explained in detail below.

I. Community Support Statements

FHFA estimates that, on average over the next several years, 7,000 Bank members will be required to submit completed Community Support Statements biennially. This corresponds to an annual average of 3,500 respondents. FHFA estimates that the average preparation time for each Community Support Statement will be 0.65 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of Community Support Statements is 2,275 hours (3,500 Statements × 0.65 hours).

II. Requests To Remove a Restriction on Access to Long-Term Advances

FHFA estimates that an annual average of 16 Bank members whose access to long-term advances has been restricted will submit requests to FHFA to remove those restrictions, and that the average preparation time for each request will be 0.75 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of requests to remove a restriction on access to long-term advances is 12 hours (16 requests × 0.75 hours).

D. Public Comments Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 20, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

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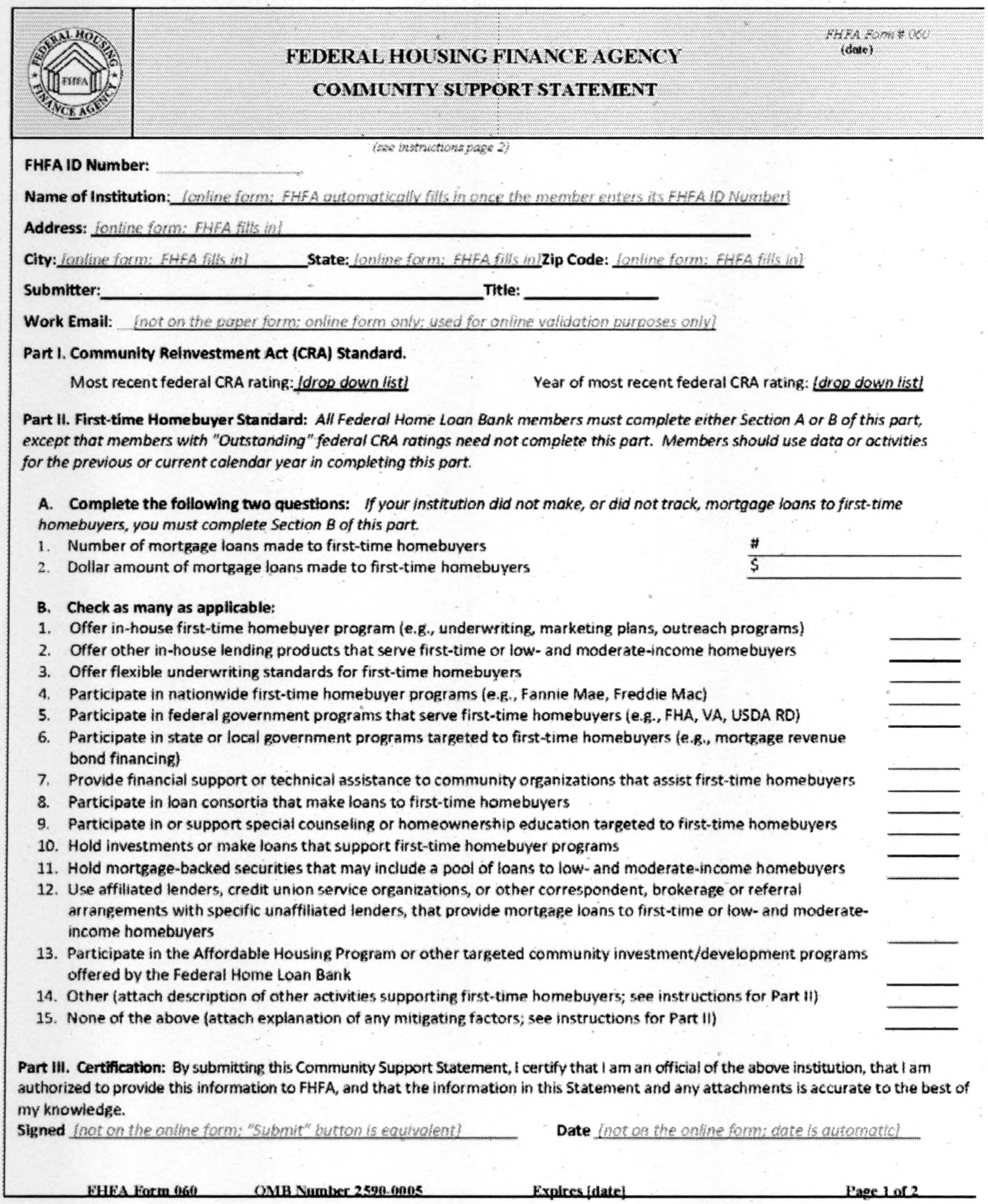
[2] *See* 12 U.S.C. 1430(g)(1).



FHFA Form # 060
(date)

FEDERAL HOUSING FINANCE AGENCY
COMMUNITY SUPPORT STATEMENT

(see instructions page 2)

FHFA ID Number: ____________

Name of Institution: *[online form: FHFA automatically fills in once the member enters its FHFA ID Number]*

Address: *[online form: FHFA fills in]*

City: *[online form: FHFA fills in]* **State:** *[online form: FHFA fills in]* **Zip Code:** *[online form: FHFA fills in]*

Submitter: ______________________ **Title:** ____________

Work Email: *[not on the paper form; online form only; used for online validation purposes only]*

Part I. Community Reinvestment Act (CRA) Standard.

Most recent federal CRA rating: *[drop down list]* Year of most recent federal CRA rating: *[drop down list]*

Part II. First-time Homebuyer Standard: *All Federal Home Loan Bank members must complete either Section A or B of this part, except that members with "Outstanding" federal CRA ratings need not complete this part. Members should use data or activities for the previous or current calendar year in completing this part.*

A. Complete the following two questions: *If your institution did not make, or did not track, mortgage loans to first-time homebuyers, you must complete Section B of this part.*

1. Number of mortgage loans made to first-time homebuyers # ____________
2. Dollar amount of mortgage loans made to first-time homebuyers $ ____________

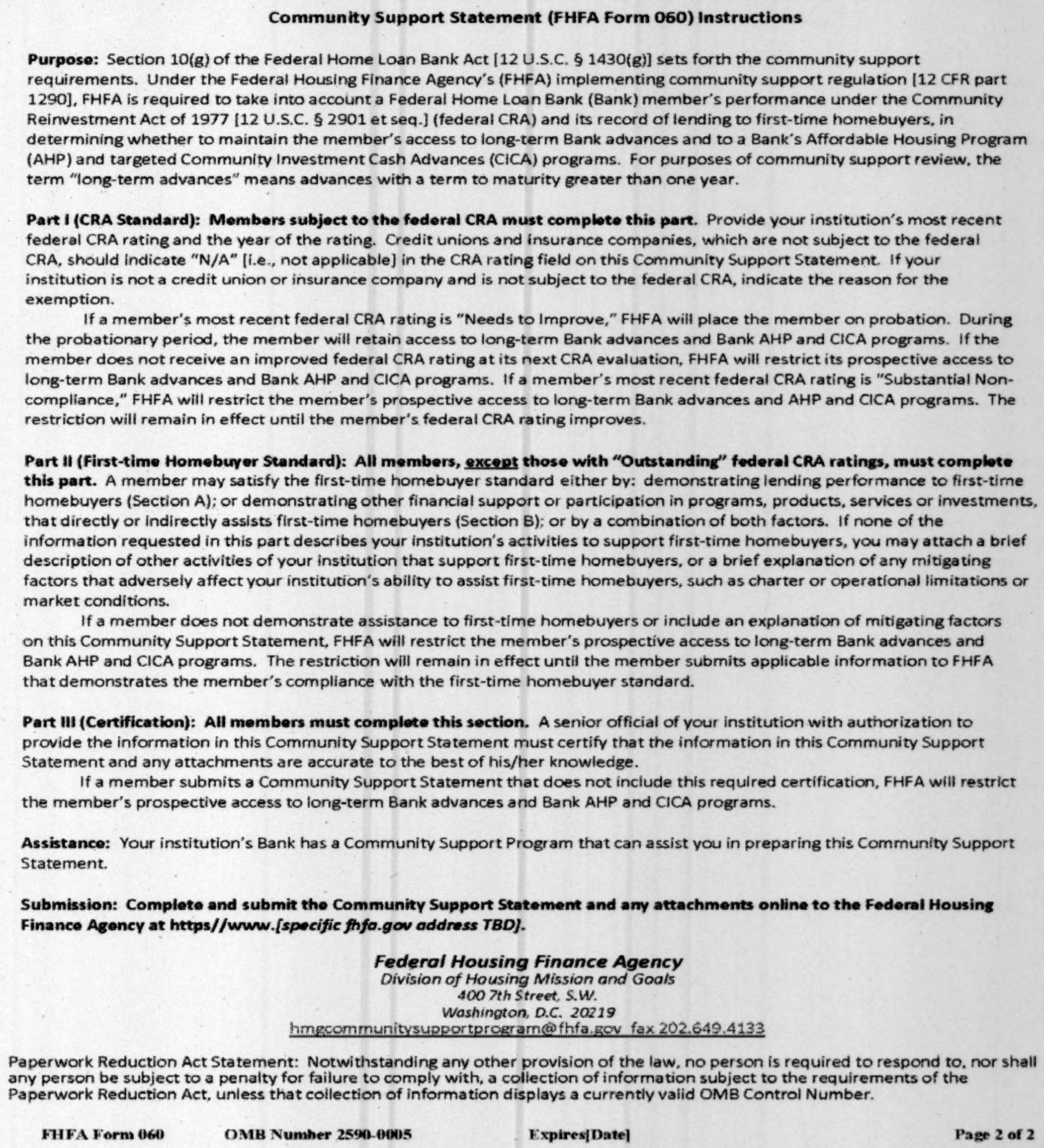
B. Check as many as applicable:

1. Offer in-house first-time homebuyer program (e.g., underwriting, marketing plans, outreach programs) ______
2. Offer other in-house lending products that serve first-time or low- and moderate-income homebuyers ______
3. Offer flexible underwriting standards for first-time homebuyers ______
4. Participate in nationwide first-time homebuyer programs (e.g., Fannie Mae, Freddie Mac) ______
5. Participate in federal government programs that serve first-time homebuyers (e.g., FHA, VA, USDA RD) ______
6. Participate in state or local government programs targeted to first-time homebuyers (e.g., mortgage revenue bond financing) ______
7. Provide financial support or technical assistance to community organizations that assist first-time homebuyers ______
8. Participate in loan consortia that make loans to first-time homebuyers ______
9. Participate in or support special counseling or homeownership education targeted to first-time homebuyers ______
10. Hold investments or make loans that support first-time homebuyer programs ______
11. Hold mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers ______
12. Use affiliated lenders, credit union service organizations, or other correspondent, brokerage or referral arrangements with specific unaffiliated lenders, that provide mortgage loans to first-time or low- and moderate-income homebuyers ______
13. Participate in the Affordable Housing Program or other targeted community investment/development programs offered by the Federal Home Loan Bank ______
14. Other (attach description of other activities supporting first-time homebuyers; see instructions for Part II) ______
15. None of the above (attach explanation of any mitigating factors; see instructions for Part II) ______

Part III. Certification: By submitting this Community Support Statement, I certify that I am an official of the above institution, that I am authorized to provide this information to FHFA, and that the information in this Statement and any attachments is accurate to the best of my knowledge.

Signed *[not on the online form; "Submit" button is equivalent]* **Date** *[not on the online form; date is automatic]*

FHFA Form 060 **OMB Number 2590-0005** **Expires [date]** **Page 1 of 2**



Community Support Statement (FHFA Form 060) Instructions

Purpose: Section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. § 1430(g)] sets forth the community support requirements. Under the Federal Housing Finance Agency's (FHFA) implementing community support regulation [12 CFR part 1290], FHFA is required to take into account a Federal Home Loan Bank (Bank) member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.] (federal CRA) and its record of lending to first-time homebuyers, in determining whether to maintain the member's access to long-term Bank advances and to a Bank's Affordable Housing Program (AHP) and targeted Community Investment Cash Advances (CICA) programs. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I (CRA Standard): Members subject to the federal CRA must complete this part. Provide your institution's most recent federal CRA rating and the year of the rating. Credit unions and insurance companies, which are not subject to the federal CRA, should indicate "N/A" [i.e., not applicable] in the CRA rating field on this Community Support Statement. If your institution is not a credit union or insurance company and is not subject to the federal CRA, indicate the reason for the exemption.

If a member's most recent federal CRA rating is "Needs to Improve," FHFA will place the member on probation. During the probationary period, the member will retain access to long-term Bank advances and Bank AHP and CICA programs. If the member does not receive an improved federal CRA rating at its next CRA evaluation, FHFA will restrict its prospective access to long-term Bank advances and Bank AHP and CICA programs. If a member's most recent federal CRA rating is "Substantial Non-compliance," FHFA will restrict the member's prospective access to long-term Bank advances and AHP and CICA programs. The restriction will remain in effect until the member's federal CRA rating improves.

Part II (First-time Homebuyer Standard): All members, except those with "Outstanding" federal CRA ratings, must complete this part. A member may satisfy the first-time homebuyer standard either by: demonstrating lending performance to first-time homebuyers (Section A); or demonstrating other financial support or participation in programs, products, services or investments, that directly or indirectly assists first-time homebuyers (Section B); or by a combination of both factors. If none of the information requested in this part describes your institution's activities to support first-time homebuyers, you may attach a brief description of other activities of your institution that support first-time homebuyers, or a brief explanation of any mitigating factors that adversely affect your institution's ability to assist first-time homebuyers, such as charter or operational limitations or market conditions.

If a member does not demonstrate assistance to first-time homebuyers or include an explanation of mitigating factors on this Community Support Statement, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs. The restriction will remain in effect until the member submits applicable information to FHFA that demonstrates the member's compliance with the first-time homebuyer standard.

Part III (Certification): All members must complete this section. A senior official of your institution with authorization to provide the information in this Community Support Statement must certify that the information in this Community Support Statement and any attachments are accurate to the best of his/her knowledge.

If a member submits a Community Support Statement that does not include this required certification, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs.

Assistance: Your institution's Bank has a Community Support Program that can assist you in preparing this Community Support Statement.

Submission: Complete and submit the Community Support Statement and any attachments online to the Federal Housing Finance Agency at https//www.*[specific fhfa.gov address TBD]*.

Federal Housing Finance Agency
Division of Housing Mission and Goals
400 7th Street, S.W.
Washington, D.C. 20219
hmgcommunitysupportprogram@fhfa.gov fax 202.649.4133

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

FHFA Form 060 **OMB Number 2590-0005** **Expires[Date]** **Page 2 of 2**

[FR Doc. 2016–22930 Filed 9–22–16; 8:45 am]

BILLING CODE 8070–01–C

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–07]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as the "Affordable Housing Program," which has been assigned control number 2590–0007 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on November 30, 2016.

DATES: Interested persons may submit comments on or before November 22, 2016.

ADDRESSES: Submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'Affordable Housing Program, (No. 2016–N–07)'" by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor,

400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "Affordable Housing Program, (No. 2016–N–07)".

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Deattra D. Perkins, Senior Policy Analyst, Division of Housing Mission & Goals, *Deattra.Perkins@fhfa.gov,* (202) 649–3133; or Sylvia C. Martinez, Manager, Federal Home Loan Bank Housing and Community Investment Programs, Division of Housing Mission & Goals, *Sylvia.Martinez@fhfa.gov,* (202) 649–3301 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations under which each of the 11 Federal Home Loan Banks (Banks) must establish an Affordable Housing Program (AHP), to provide subsidy to the Bank's member institutions to: (1) Finance homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households); and (2) to finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units will be occupied by and affordable for households earning 50 percent or less of the area median income (very low-income households).[1] Section 10(j) also establishes standards and requirements for providing such subsidized funding to Bank members and requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 11 Banks of $100 million.[2]

FHFA's AHP regulation, which implements the statutory AHP requirements, is set forth at 12 CFR part 1291. The regulation requires that each Bank establish and fund an AHP and sets forth the parameters within which the Banks' programs must operate. The regulation permits the Banks a degree of discretion in determining how their individual programs are to be implemented and requires that each Bank adopt an AHP Implementation Plan setting forth the specific requirements for that Bank's program.[3]

Competitive Application Programs

The AHP regulation requires each Bank to establish a competitive application program under which the Bank accepts applications for AHP subsidized advances or direct subsidies (grants) submitted by its members on behalf of non-member entities having a significant connection to the projects for which subsidy is being sought (project sponsors).[4] Each Bank accepts applications for AHP subsidy under its competitive application program during a specified number of funding periods each year, as determined by the Bank.[5] A Bank must determine for each application it receives whether the proposed project meets the AHP regulatory eligibility requirements.[6] The Bank must score each application according to AHP regulatory and Bank-specific scoring guidelines, and approve the highest scoring projects within that funding period for AHP subsidy.[7]

The regulation provides that, prior to each disbursement of AHP subsidy for a project approved under a Bank's competitive application program, the Bank must confirm that the project continues to meet the AHP regulatory eligibility requirements, as well as all commitments made in the approved AHP application.[8] As part of this process, Banks typically require that the member and project sponsor provide documentation demonstrating continuing compliance.

The regulation permits a Bank to approve a modification to the terms of an approved application that would change the score that the application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time. To approve a modification: (i) The project, incorporating the changes, must continue to meet the regulatory eligibility requirements; (ii) the application, as reflective of the changes, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved; and (iii) there must be good cause for the modification, and the analysis and justification for the modification must be documented by the Bank in writing.[9] Banks typically require the member and project sponsor requesting a modification to provide a written analysis and justification as part of their modification request.

The regulation requires generally that a Bank monitor each owner-occupied and rental project receiving AHP subsidy under its competitive application program prior to and after project completion. For initial monitoring, a Bank must determine whether the project is making satisfactory progress towards completion, in compliance with the commitments made in the approved application, Bank policies, and the AHP regulatory requirements. Following project completion, the Bank must determine whether satisfactory progress is being made towards occupancy of the project by eligible households, and whether the project meets the regulatory requirements and the commitments made in the approved application.[10] For long-term monitoring of rental projects, subject to certain exceptions in the AHP regulation, the Bank must determine whether, during the 15-year retention period, the household incomes and rents comply with the income targeting and rent commitments made in the approved application.[11] For both the initial and long-term monitoring, a Bank must review appropriate documentation maintained by the project sponsor.

Homeownership Set-Aside Programs

The AHP regulation also authorizes each Bank, in its discretion, to allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low- or moderate-income households.[12] Under these homeownership set-aside programs, a Bank may provide to its members AHP direct subsidies, which are to be provided by the members to eligible households as a grant to pay for down payment, closing cost, counseling cost or rehabilitation assistance in connection with the household's purchase of a primary residence or rehabilitation of an owner-occupied residence.[13] Prior to the Bank's disbursement of a direct subsidy under its homeownership set-aside program, the member must provide a certification that the subsidy will be provided in compliance with all applicable regulatory eligibility requirements.[14]

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[1] 12 U.S.C. 1430(j)(1) and (2).

[2] 12 U.S.C. 1430(j)(5)(C).

[3] 12 CFR 1291.3.

[4] 12 CFR 1291.5. Under the regulation, an AHP project sponsor may be an entity that either: (1) has an ownership interest in a rental project; (2) is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units; (3) operates a loan pool; or (4) is a revolving loan fund. 12 CFR 1291.1 (definition of "sponsor").

[5] 12 CFR 1291.5(b)(1).

[6] 12 CFR 1291.5(c).

[7] 12 CFR 1291.5(d).

[8] 12 CFR 1291.5(g)(3).

[9] 12 CFR 1291.5(f).

[10] 12 CFR 1291.7(a)(1).

[11] 12 CFR 1291.7(a)(4).

[12] 12 CFR 1291.2(b)(2); 1291.6.

AHP Information Submitted by Banks to FHFA

FHFA's Data Reporting Manual (DRM) requires each Bank to submit to FHFA aggregate AHP information.[15] The DRM requires each Bank to submit to FHFA project-level information regarding its competitive application program and household-level information regarding its homeownership set-aside program semi-annually. The information the Banks are required to submit to FHFA under the DRM is derived from the documentation submitted by Bank members and project sponsors that is described above.

B. Need for and Use of the Information Collection

The Banks use the information collected under part 1291 to determine whether: (1) Projects for which Bank members and project sponsors are seeking subsidies under the Banks' competitive application programs satisfy the applicable statutory and regulatory requirements and score highly enough in comparison with other applications submitted during the same funding period to be approved for AHP subsidies; (2) projects approved under the Banks' competitive application programs continue to meet the applicable requirements and to comply with the commitments made in the approved applications each time subsidy is disbursed; (3) requests for modifications of projects approved under the Banks' competitive application programs meet the regulatory requirements for approval; (4) projects approved under the Banks' competitive application programs are making satisfactory progress towards completion, and following project completion, are making satisfactory progress towards occupancy of the project by eligible households, in compliance with the commitments made in the approved applications, Bank policies, and the regulatory requirements (initial monitoring); (5) during the 15-year retention period, completed rental projects continue to comply with the household income targeting and rent commitments made in the approved applications (long-term monitoring); and (6) applications for direct subsidy under Banks' homeownership set-aside programs were approved, and the direct subsidies disbursed, in accordance with the regulatory requirements.

FHFA uses the information required to be submitted by the Banks under the DRM to verify that the Banks' funding decisions, and the use of the funds awarded, were consistent with statutory and regulatory requirements.

The OMB control number for the information collection is 2590–0007. The current clearance expires on November 30, 2016. The likely respondents are institutions that are Bank members and non-member entities that sponsor an AHP project.

C. Burden Estimate

FHFA has analyzed each of the six facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members and AHP project sponsors annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 115,750. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

I. AHP Competitive Applications

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 1,350 applications for AHP subsidies under the Banks' competitive application programs and that the average preparation time for each application will be 24 hours. The estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of AHP competitive applications is 32,400 hours (1,350 applications × 24 hours).

II. Compliance Submissions for Approved Competitive Application Projects at AHP Subsidy Disbursement

FHFA estimates that Bank members, on behalf of project sponsors, will make an annual average of 700 submissions to the Banks documenting that projects approved under the Banks' competitive application programs continue to comply with the regulatory eligibility requirements and all commitments made in the approved applications at the time each AHP subsidy is disbursed, and that the average preparation time for each submission will be 1 hour. The estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these compliance submissions is 700 hours (700 submissions × 1 hour).

III. Modification Requests for Approved Competitive Application Projects

FHFA estimates that Bank members, on behalf of project sponsors, will submit to the Banks an annual average of 300 requests for modifications to projects that have been approved under the Banks' competitive application programs, and that the average preparation time for each request will be 2.5 hours. The estimate for the total annual hour burden on members and project sponsors in connection with the preparation and submission of these modification requests is 750 hours (300 requests × 2.5 hours).

IV. Initial Monitoring Submissions for Approved Competitive Application Projects

FHFA estimates that project sponsors will make an annual average of 500 submissions of documentation to the Banks for purposes of the Banks' initial monitoring of in-progress and recently completed projects approved under their competitive application programs, and that the average preparation time for each submission will be 5 hours. The estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for initial monitoring of competitive application projects is 2,500 hours (500 submissions × 5 hours).

V. Long-Term Monitoring Submissions for Approved Competitive Application Program Projects

FHFA estimates that project sponsors will make an annual average of 4,800 submissions of documentation to the Banks for purposes of the Banks' long-term monitoring of completed projects approved under their competitive application programs, and that the average preparation time for each submission will be 3 hours. The estimate for the total annual hour burden on project sponsors in connection with the preparation and submission of documentation required for long-term monitoring of competitive application projects is 14,400 hours (4,800 submissions × 3 hours).

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[13] 12 CFR 1291.6(c)(4).

[14] 12 CFR 1291.7(b)(2).

[15] The AHP reporting requirements are located in chapter 5 of the DRM, which is available electronically on FHFA's public Web site at *http://www.fhfa.gov/SupervisionRegulation/FederalHomeLoanBanks/Documents/FHFB-Resolutions/2006/2006-13-Attachment.pdf.*

VI. Homeownership Set-aside Program Applications and Certifications

FHFA estimates that Bank members will submit to the Banks an annual average of 13,000 applications and required certifications for AHP direct subsidies under the Banks' homeownership set-aside programs, and that the average preparation time for those submissions together will be 5 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of homeownership set-aside program applications and certifications is 65,000 hours (13,000 applications/certifications × 5 hours).

D. Public Comments Request

Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on members and project sponsors, including through the use of automated collection techniques or other forms of information technology.

Dated: September 20, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2016–22947 Filed 9–22–16; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *Community Savings Bancorp, Inc., Caldwell, Ohio;* to become a savings and loan holding company through the mutual to stock conversion and acquisition of Community Savings, Caldwell, Ohio.

Board of Governors of the Federal Reserve System, September 20, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–22955 Filed 9–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 11, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Frank L Carson, IV, Mulvane, Kansas;* to retain shares of Mulvane Bankshares, Inc., Mulvane, Kansas, and for approval as a member of the Carson Family Group that controls Mulvane Bankshares, Inc. Notification submitted by Sidney A. Reitz, Salina, Kansas, as trustee of Frank L. Carson, Jr. Trust No. 2; and Frank L. Carson, III Trust No. 2; to retain control of Mulvane Bankshares, Inc., and for approval as a member of the Carson Family Group. Mulvane Bankshares, Inc. controls Carson Bank, Mulvane, Kansas.

Board of Governors of the Federal Reserve System, September 20, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–22956 Filed 9–22–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4179–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2017

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2017. The calendar year 2017 AIC threshold amounts are $160 for ALJ hearings and $1,560 for judicial review.

DATES: *Effective Date:* This notice is effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (*Katherine.Hosna@cms.hhs.gov*), (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearing requests and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C/Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Medicare Part C appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, §§ 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted previously, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. The regulations at § 423.562(c) prescribe that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, §§ 423.1970 and 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the independent review entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Sections 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council (MAC) decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2017

The AIC threshold amount for ALJ hearing requests will rise to $160 and the AIC threshold amount for judicial review will rise to $1,560 for CY 2017. These amounts are based on the 56.110 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 464.582 in July 2016. The AIC threshold amount for ALJ hearing requests changes to $156.11 based on the 56.110 percent increase over the initial threshold amount of $100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of $10. Therefore, the CY 2017 AIC threshold amount for ALJ hearings is $160.00. The AIC threshold amount for judicial review changes to $1561.10 based on the 56.110 percent increase over the initial threshold amount of $1,000. This amount was rounded to the nearest multiple of $10, resulting in the CY 2017 AIC threshold amount of $1,560.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2013 through 2017 threshold amounts.

	CY 2013	CY 2014	CY 2015	CY 2016	CY 2017
ALJ Hearing	$140	$140	$150	$150	$160
Judicial Review	1,400	1,430	1,460	1,500	1,560

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 7, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–23002 Filed 9–22–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10105]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 24, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Implementation of the In-Center Hemodialysis CAHPS Survey; *Use:* Data collected in the national implementation of the In-center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey will be used to: (1) Provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection, (2) aid facilities with their internal quality improvement efforts and external benchmarking with other facilities, (3) provide CMS with information for monitoring and public reporting purposes, and (4) support the end-stage renal disease value-based purchasing program. *Form Number:* CMS–10105 (OMB control number: 0938–0926). *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 109,328; *Total Annual Responses:* 109,328; *Total Annual Hours:* 59,037. (For policy questions regarding this collection contact Julia Zucco at 410–786–6670.)

Dated: September 20, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–22967 Filed 9–22–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1399]

Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in Food and Drug Administration Advisory Committees; Draft Guidance for the Public, Food and Drug Administration Advisory Committee Members, and Food and Drug Administration Staff; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the notice that

appeared in the **Federal Register** of June 29, 2016. In the notice, FDA requested comments on "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in FDA Advisory Committees; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff" and on whether FDA should request that each advisory committee member, who receives an authorization from FDA on an appearance issue so that they may participate in an advisory committee meeting, voluntarily publicly disclose the authorization. The Agency is taking this action due to errors displayed on the FDA Web site pertaining to this guidance.

DATES: FDA is extending the comment period for the notice that published on June 29, 2016 (81 FR 42363) by an additional 60 days. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 26, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov* .Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1399 for "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in FDA Advisory Committees; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for a single hard copy of the draft guidance entitled "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in FDA Advisory Committees; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff" to the Advisory Committee Oversight and Management Staff, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Janine M. Morris, Office of Special Medical Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5114, Silver Spring, MD 20993–0002, 301–796–5706.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 29, 2016, FDA published a notice with a 90-day comment period to request comments on the draft guidance and public disclosure of authorizations described in this guidance.

The Agency has decided to allow for a 60-day extension of the comment period for the notice. The FDA Web site that displayed the posting of this guidance indicated, in error, that the guidance was not open for comment. The Agency was concerned that individuals visiting the FDA Web site and interested in providing comments may not have known that the document was available for comment under the docket found at *http://www.regulations.gov.*

FDA is therefore extending the comment period for the notice for an additional 60 days, until November 26, 2016. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without compromising timely publication of the final guidance.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet at either *http://*

www.fda.gov/RegulatoryInformation/Guidances/ucm122045.htm or *http://www.regulations.gov.*

Dated: September 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22936 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0072]

Determination of Regulatory Review Period for Purposes of Patent Extension; FYCOMPA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FYCOMPA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 22, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 22, 2017. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–E–0072 for "Determination of Regulatory Review Period for Purposes of Patent Extension; FYCOMPA." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product FYCOMPA (perampanel). FYCOMPA is indicated as adjunctive therapy for the treatment of partial-onset seizures with or without secondarily generalized seizures in patients with epilepsy aged 12 years and older. Subsequent to this approval, the USPTO received a patent term restoration application for FYCOMPA (U.S. Patent No. 6,949,571) from Eisai R&D Management Co., Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 26, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of FYCOMPA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for FYCOMPA is 3,274 days. Of this time, 2,968 days occurred during the testing phase of the regulatory review period, while 306 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* November 7, 2003. FDA has verified the Eisai R&D Management Co., Ltd. claim that November 7, 2003, is the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 22, 2011. The applicant claims May 25, 2011, as the date that the new drug application (NDA) for Fycompa (NDA 202834) was initially submitted. However, FDA records indicate that NDA 202834, received May 25, 2011, was not sufficiently complete to permit a substantive review. FDA refused to file this application and notified the applicant of this fact by letter dated July 21, 2011. The completed NDA was then submitted on December 22, 2011, which is considered to be the date that the NDA was initially submitted within the meaning of 35 U.S.C. 156(g)(B)(ii).

3. *The date the application was approved:* October 22, 2012. FDA has verified the applicant's claim that NDA 202834 was approved on October 22, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,549 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22933 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–2360 and FDA–2014–E–2361]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYALEPT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYALEPT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 22, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 22, 2017. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential,

if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2014–E–2360 and FDA–2014–E–2361 for "Determination of Regulatory Review Period for Purposes of Patent Extension; MYALEPT." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product MYALEPT (metreleptin). MYALEPT is indicated as an adjunct to diet as replacement therapy to treat the complications of leptin deficiency in patients with congenital or acquired generalized lipodystrophy. Subsequent to this approval, the USPTO received two patent term restoration applications for MYALEPT (U.S. Patent No. 6,001,968 from The Rockefeller University, and U.S. Patent No. 7,183,254 from Amgen, Inc.; The Board of Regents, The University of Texas System; and the Secretary, United States Department of Health and Human Services, National Institutes of Health). The USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. The USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 22, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of MYALEPT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MYALEPT is 6,509 days. Of this time, 6,174 days occurred during the testing phase of the regulatory review period, while 335 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 2, 1996. The applicants claim June 19, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the first IND effective date was May 2, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: March 27, 2013. FDA has verified the applicants' claims that the biologics license application (BLA) for MYALEPT (BLA 125–390) was initially submitted on March 27, 2013.

3. *The date the application was approved:* February 24, 2014. FDA has verified the applicant's claim that BLA 125–390 was approved on February 24, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In the applications for patent extension, the applicants each seek 1,206 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22935 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Bone, Reproductive and Urologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Bone, Reproductive and Urologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on December 6, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: Tommy Douglas Conference Center, 10000 New Hampshire Ave., Silver Spring, MD 20903. The conference center's telephone number is 240–645–4000. Answers to commonly asked questions including information regarding accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *BRUDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss appropriate clinical trial design features, including acceptable endpoints for demonstrating clinical benefit, for drugs intended to treat secondary hypogonadism while preserving or improving testicular function, including spermatogenesis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 21, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 10, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 14, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–22925 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2012–E–1231; FDA–2012–E–1232; and FDA–2012–E–1247]

Determination of Regulatory Review Period for Purposes of Patent Extension; BELVIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BELVIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by November 22, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 22, 2017. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2012–E–1231; FDA–2012–E–1232; and FDA–2012–E–1247, for "Determination of Regulatory Review Period for Purposes of Patent Extension; BELVIQ." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, BELVIQ (lorcaserin hydrochloride hemihydrate). BELVIQ is indicated as an adjunct to a reduced-calorie diet and increased physical activity for chronic weight management in adults. Subsequent to this approval, the USPTO received patent term restoration applications for BELVIQ (U.S. Patent Nos. 6,953,787; 7,514,422; and 7,977,329) from Arena Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated February 13, 2013, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BELVIQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BELVIQ is 2,928 days. Of this time, 2,009 days occurred during the testing phase of the regulatory review period, while 919 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug,*

and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective: June 23, 2004. FDA has verified the Arena Pharmaceuticals, Inc. claim that June 23, 2004, is the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 22, 2009. The applicant claims December 18, 2009, as the date the NDA for BELVIQ was initially submitted. However, FDA records indicate that NDA 22–529 was submitted on December 22, 2009.

3. *The date the application was approved:* June 27, 2012. FDA has verified the applicant's claim that NDA 22–529 was approved on June 27, 2012. FDA has verified the applicant's claim that NDA 22–529 was approved on June 27, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,174 days; 1,051 days; or 352 days of patent term extension, respectively.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22937 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0881]

Self-Identification of Generic Drug Facilities, Sites, and Organizations; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled "Self-Identification of Generic Drug Facilities, Sites, and Organizations." On July 9, 2012, the Generic Drug User Fee Amendments of 2012 (GDUFA) was signed into law by the President. GDUFA, designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry, requires that generic drug facilities, sites, and organizations around the world provide identification information annually to FDA. This guidance is intended to assist industry to meet the self-identification requirement. It explains who is required to self-identify, what information must be requested, how the information should be submitted to FDA, and what the penalty is for failure to self-identify.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2012–D–0881 for "Self-Identification of Generic Drug Facilities, Sites, and Organizations." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/*

regulatoryinformation/dockets/default.htm.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Andrew LeBoeuf, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–0503.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Self-Identification of Generic Drug Facilities, Sites, and Organizations." The guidance announced in this notice finalizes the draft guidance of the same name announced in the **Federal Register** of August 27, 2012 (77 FR 51811). Compared to the draft guidance, the final guidance clarifies various matters, including that the self-identification requirements have been implemented, and simplifies the instructions for electronic submission of self-identification information. FDA received one comment on the draft guidance, which was considered as the guidance was finalized.

On July 9, 2012, GDUFA (Pub. L. 112–144, Title III) was signed into law by the President. GDUFA is designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA enables FDA to assess user fees to support critical and measurable enhancements to FDA's generic drugs program. GDUFA will also significantly improve global supply chain transparency by requiring owners of facilities producing generic drug products, active pharmaceutical ingredients (API), and certain other sites and organizations that support the manufacture or approval of these products to electronically self-identify with FDA and update that information annually.

Self-identification is required for two purposes. First, it is necessary to determine the universe of facilities required to pay user fees. Second, self-identification is a central component of an effort to promote global supply chain transparency. The information provided through self-identification enables quick, accurate, and reliable surveillance of generic drugs and facilitates inspections and compliance.

Most facilities that self-identify are required to pay an annual facility user fee. These include facilities manufacturing, or intending to manufacture, API of human generic drugs and/or finished dosage form (FDF) human generic drugs. Other facilities, sites, and organizations must self-identify, but are not required to pay the annual facility user fee. These include facilities that solely manufacture positron emission tomography drugs, or sites and organizations that only perform testing, repackaging, or relabeling operations. Please note that while re-packagers are not required to pay user fees, packagers are, in most cases, FDF manufacturers and subject to facility fees.

A separate system for the electronic self-identification of generic industry facilities, sites, and organizations was established for GDUFA. Entities required to register and list (under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) or section 351 of the Public Health Service Act (42 U.S.C. 262)), and those required to self-identify under GDUFA, submit information separately to the respective systems. Each system populates its own database to meet unique requirements and deadlines. The new GDUFA system uses the same platform and technical standards already familiar to manufacturers required to register and list.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Self-Identification of Generic Drug Facilities, Sites, and Organizations." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 19, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–22944 Filed 9–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service; Extension of Comment Period

AGENCY: Indian Health Service, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: This document extends the comment period in the Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service announcement that was published in the **Federal Register** on June 3, 2016.

DATES: The comment period has been extended to November 30, 2016.

FOR FURTHER INFORMATION CONTACT: Roselyn Tso, Acting Director, Office of Direct Service and Contracting Tribes, Indian Health Service, 5600 Fishers Lane, Mail Stop 08E17, Rockville, MD 20857, telephone (301) 443–1104. (This is not a toll-free number.)

Dated: September 16, 2016.

Mary Smith,

Principal Deputy Director, Indian Health Service.

[FR Doc. 2016–22922 Filed 9–22–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid Assessment of Zika Virus (ZIKV) Complications (R21).

Date: October 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Senior Scientific Review, Officer Scientific Review Program, Division of Extramural Activities, Room 3E61, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5019, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 19, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22899 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical and Epidemiological grant applications (Cooperative Agreements and RPGs).

Date: October 19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 19, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22898 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of SCORE Applications.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis, Washington DC, 923 16th and K Street NW., Washington, DC 20006.

Contact Person: John J. Laffan, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of MIRA Applications.

Date: November 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research; Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22900 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive License: Therapeutics for Frontotemporal Dementia, Alzheimer's Disease Excluding Intranasal Delivery, Neuronal Injury (Stroke, Traumatic Brain Injury (TBI) and Epilepsy), and Progressive Supranuclear Palsy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive license to Cogentis Therapeutics, Inc. which is located in Maryland, to practice the inventions embodied in the following patents: U.S. Patent 8,597,660, issued December 3, 2013 (HHS reference E–144–2010/0–US–02).

The patent rights in these inventions have been assigned to the United States of America. The prospective start-up exclusive license territory may be worldwide and the field of use may be limited to Frontotemporal dementia, Alzheimer's disease excluding intranasal delivery, Neuronal injury (stroke, traumatic brain injury (TBI) and epilepsy), and Progressive Supranuclear Palsy.

DATES: Only written comments and/or applications for a license which are received by NINDS Technology Transfer on or before October 11, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated start-up exclusive license should be directed to: Susan Ano, Ph.D., NINDS Technology Transfer, 31 Center Drive, Suite 8A52, MS2540, Bethesda, MD 20892; Telephone: (301) 435–5515; Email: *anos@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention discloses treating neurodegenerative diseases by administering cyclin dependent kinase 5 (Cdk5) inhibitory peptides derived from P35, the activator of Cdk5. Abnormally hyperactive Cdk5 has been shown to be associated with a variety of neurodegenerative disorders. This invention describes isolated peptide fragments, pharmaceutical compositions and methods for use of such for treating subjects with a neurodegenerative disease, such as Alzheimer's disease (AD), Amyotrophic Lateral Sclerosis (ALS) and Parkinson's disease (PD). An inhibitory fragment, TFP5, disclosed in this invention, has been shown to ameliorate symptoms of AD in disease animal models without any evidence of toxicity. In particular, TFP5 treatment of rat cortical neurons reduced hyperactivation of Cdk5 upon neuronal stress and insults. Following intraperitoneal (ip) injection, TFP5 was capable of crossing the blood-brain barrier and localizing within the brain where it was found to rescue memory deficits and pathology in a double transgenic mouse (APP/PS1) AD model.

The prospective start-up exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 19, 2016.

Susan Ano,

Technology Development Coordinator, NINDS Technology Transfer, National Institutes of Health.

[FR Doc. 2016–22897 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Palliative Care: Conversations Matter® Phase Two Evaluation (National Institute of Nursing Research)

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 12, 2016, page 45169 (81 FR 45169) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Diana Finegold, Office of Communications and Public Liaison, NINR, NIH, Building 31, Suite 5B03, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 496–0209, or Email your request, including your address to: *Diana.Finegold@nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institute of Nursing Research (NINR), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Palliative Care: Conversations Matter® Phase Two Evaluation, 0925–0683, National Institute of Nursing Research (NINR), National Institutes of Health (NIH).

Need and Use of Information Collection: The NINR *Palliative Care: Conversations Matter*® initiative, which launched in FY 2014, is now in its second phase. The first phase was focused on providing materials and tools to assist health care providers in having sometimes difficult conversations with children and families about palliative care. The second phase of the campaign, launched in FY 2015, focuses on children, parents, and families. The *Palliative Care: Conversations Matter*® Phase Two evaluation will assess the information and materials being disseminated to children, parents, and families. Survey findings will help (1) determine if the campaign is effective, relevant, and useful to the families and caregivers of children living with serious illnesses; (2) to better understand the information needs of families and caregivers to inform future campaign efforts; and (3) examine how effective the campaign materials are in providing families and caregivers with information on palliative care.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 371 hours.

TABLE A–12–1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Screener	Parents and Caregivers	10,000	1	2/60	333
Main Survey	Parents and Caregivers of Children with Serious Illnesses—Completes.	150	1	15/60	38
Total		10,150	10,150		371

Dated: September 13, 2016.

Diana Finegold,

Project Clearance Liaison, NINR, NIH.

[FR Doc. 2016–22998 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: October 18–19, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W602, Bethesda, MD 20892–9750, 240–276–6456, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Planning Grants for Global Research Infrastructure in Non-Communicable Disease 1.

Date: October 25, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael B. Small, Ph.D., Chief, Program and Review Extramural Staff Training Office (PRESTO), Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W412, Bethesda, MD 20892–9750, 240–276–6438, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–1.

Date: October 27–28, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Jennifer C Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W634, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging for the Evaluation of Responses to Cancer Therapies.

Date: November 2, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research and Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W244, Rockville, MD 20850, 240–276–6373, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Research Centers for Cancer Systems Biology Consortium (U54).

Date: November 9–10, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W234, Bethesda, MD 20892–9750, 240–276–6368, *stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Member Conflict SEP.

Date: November 10, 2016.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W238, Rockville, MD 20850, 240–276–7755, *byeong-chel.lee@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–22896 Filed 9–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0022]

Revisions to the Public Assistance Program and Policy Guide

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on proposed revisions to the *Public Assistance Program and Policy Guide (PAPPG).*

DATES: Comments must be received by October 24, 2016.

ADDRESSES: Comments must be identified by docket ID FEMA–2016–0022 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Christopher Logan, Acting Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–3834.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed additions and changes to the *PAPPG* are available in docket ID FEMA–2016–0022. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

The purpose of this notice is to seek public comment on proposed revisions to the *PAPPG.* The revisions are intended to clarify and reflect current Public Assistance policy. The proposed policy does not have the force or effect of law.

FEMA seeks comment on the proposed policy language, which is available online at *http://www.regulations.gov* in docket ID FEMA–2016–0022. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When FEMA issues the revised *PAPPG,* FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.* The final policy will not have the force or effect of law.

Authority: 42 U.S.C. 5121–5207.

Dated: September 16, 2016.

David Bibo,

Deputy Associate Administrator, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2016–22859 Filed 9–22–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 or send an email to *title5@hud.gov* for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*e.g.*, acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853, (315)–225–7384; COE: Ms. Brenda Johnson-Turner, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314, (202)–761–7238; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave., #104, Hollywood, FL 33021; (443) 223–4639; NASA: Mr. William Brodt, National Aeronautics and Space Administration, 300 E Street SW., Room 2P85, Washington, DC 20546, (202)–358–1117; NAVY: Ms. Nikki Hunt, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)–685–9426; (These are not toll-free numbers).

Dated: September 15, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 09/23/2016

Suitable/Available Properties

Building

Louisiana

Former Hammond Army Reserve Center
1290 SW Railroad Ave.
Hammond LA 70403
Landholding Agency: GSA
Property Number: 54201630011
Status: Excess
GSA Number: 7–A–LA–0579–AA
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: 56+ yrs.-old; 12,327 sq. ft.; 36+ mos. vacant; contact GSA for more information

Ohio

MUR BOS Project Office
MUR BOS–22841; BOS–01–A–01; 11614 Glenpark Rd. NE
Boliver OH 44612
Landholding Agency: COE
Property Number: 31201630023
Status: Excess
Directions: DAM Flood Control Structure
Comments: 712 sq. ft.; office and garage; 77+ years-old; insulation needed; possible lead & asbestos; remediation needed; contact COE for more information

Virginia

663 Darcy Pl.
JBLE
Ft. Eustis VA
Landholding Agency: Air Force
Property Number: 18201630016
Status: Unutilized
Comments: off-site removal only; no future agency need; 40,090 sq. ft.; relocation extremely difficult due to size/type; barracks; contact Air Force for more details

Unsuitable Properties

Building

Georgia

Facility 1010, XDQU
Savannah Hilton Head International Airport
Garden City GA 31408
Landholding Agency: Air Force
Property Number: 18201630017
Status: Unutilized
Directions: 1401 Robert B. Miller Jr. Dr.
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Hawaii

Bldg. 6109
Marine Corps Base
Kaneohe Bay HI 96863
Landholding Agency: Navy
Property Number: 77201630026
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Illinois

Base Hazardous Storage
RPUID 404849; CAT CODE 442257; Facility 00029
Abraham Lincoln Capital Airport (DCFT)
Springfield IL 62707
Landholding Agency: Air Force
Property Number: 18201630018
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Mississippi

Bldg. 2436 Butler Complex
Stennis Space Center
SSC MS 39529
Landholding Agency: NASA
Property Number: 71201630013
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

New Jersey

C23, C36, C37, MSNAP
Storage/Security NWS Earle
1090 Road T–4 Rd.
Colts Neck NJ 07722
Landholding Agency: Navy
Property Number: 77201630030
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

North Carolina

Frisco Pier and Pier House
54221 Cape Hatteras Pier Rd.
Frisco NC 27936
Landholding Agency: Interior
Property Number: 61201630016
Status: Unutilized
Comments: documented deficiencies: Pier 60% demolished; damaged & collapsed; structurally unsound; clear threat to personal physical safety
Reasons: Extensive deterioration

Ohio

9 Buildings
2988 North Access Road
Columbus OH 42317
Landholding Agency: Navy
Property Number: 77201630028
Status: Excess
Directions: 1000; 1001; 1002; 1003; 1009; 1011; 1012; 1013; 1014
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Virginia

Building 3436
JEB Little Creek
VA Beach VA 23518
Landholding Agency: Navy
Property Number: 77201630027
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Building 1102
JEB Little Creek
VA Beach VA
Landholding Agency: Navy
Property Number: 77201630029
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Wyoming

Trailer M61 & M62
70/84 Tower Government Rd.

Yellowstone
National Park WY 82190
Landholding Agency: Interior
Property Number: 61201630015
Status: Unutilized
Comments: documented deficiencies: Severe rodent & insect infestations; possible Hanta Virus; structurally unsound; clear threat to personal physical safety
Reasons: Extensive deterioration

Colorado

59 Acre Portion of the Denver
Federal Center; Intersection of
Union Blvd. & W. 4th Ave.
Lakewood CO 80225
Landholding Agency: GSA
Property Number: 54201630010
Status: Surplus
GSA Number: 7–G–CO–0441–21–AJ
Comments: hazardous constituents at concentrations exceeding residential/unrestricted use levels; clear threat to personal physical safety
Reasons: Contamination

[FR Doc. 2016–22584 Filed 9–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2014–0018; 96300–1671–0000–R4]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Seventeenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the seventeenth regular meeting of the Conference of the Parties to CITES (CoP17) in Johannesburg, South Africa, September 24 to October 5, 2016. This notice announces the availability of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP17.

ADDRESSES: Copies of tentative U.S. negotiating positions on amendments to the CITES Appendices (species proposals), draft resolutions and decisions, and agenda items submitted by other countries and the CITES Secretariat for consideration at CoP17 are available:

- *Electronically at: http://www.regulations.gov* in Docket No. FWS–HQ–IA–2014–0018, or on our Web site at *http://www.fws.gov/international/cites/cop17;*
- *By email request to: managementauthority@fws.gov;* or
- By postal mail or in person, by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at: U.S. Fish and Wildlife Service Headquarters, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and other agenda items, contact Craig Hoover, Chief, Division of Management Authority; telephone: 703–358–2095; email: *managementauthority@fws.gov;* facsimile: 703–358–2298. For information pertaining to species proposals, contact Rosemarie Gnam, Chief, Division of Scientific Authority; telephone: 703–358–1708; email: *scientificauthority@fws.gov;* facsimile: 703–358–2276.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/index.php.*

Currently 182 countries and the European Union have ratified, accepted, approved, or acceded to CITES; these 183 entities are known as Parties. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference of the Parties decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat and the permanent CITES committees (Standing, Animals, and Plants Committees), and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and other agenda items for consideration by all of the Parties at the meetings. Accredited nongovernmental organizations (NGOs) may participate in the meeting as approved observers and may speak during sessions when recognized by the meeting Chairman, but they may not vote or submit proposals.

This is our sixth in a series of **Federal Register** notices on the development of U.S. submissions and tentative negotiating positions for CoP17. In this notice, we announce the availability of tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items submitted by other Parties and the Secretariat for consideration at CoP17. The **ADDRESSES** section, above, explains how to obtain a copy of all of this information.

We published our first CoP17-related **Federal Register** notice on June 27, 2014 (79 FR 36550), in which we requested information and recommendations on species proposals for the United States to consider submitting for consideration at CoP17. In that notice, we also described the U.S. approach to preparations for CoP17. We published our second such **Federal Register** notice on May 11, 2015 (80 FR 26948), in which we requested information and recommendations on proposed resolutions, decisions, and other agenda items for the United States to consider submitting for consideration at CoP17, and provided preliminary information on how to request approved observer status for nongovernmental organizations that wish to attend the meeting. In our third CoP17-related **Federal Register** notice, published on August 26, 2015 (80 FR 51830), we requested public comments and information on species proposals that the United States is considering submitting for consideration at CoP17, and in our fourth such notice, published on December 4, 2015 (80 FR 75873), we requested public comments and information on proposed resolutions, decisions, and other agenda items that the United States was considering submitting for consideration at CoP17, and provided more information on how to request approved observer status for nongovernmental organizations that wish to attend the meeting. In our fifth **Federal Register** notice, published on June 23, 2016 (81 FR 40900), we announced the provisional agenda for CoP17, solicited comments on the items on the provisional agenda, and announced a public meeting for July 19, 2016.

A link to the complete list of those **Federal Register** notices, along with information on U.S. preparations for CoP17, can be found at *http://www.fws.gov/international/cites/cop17.* The notices and public comments received can be viewed at *http://www.regulations.gov* in Docket No. FWS–HQ–IA–2014–0018. You may obtain additional information on those **Federal Register** notices from the following sources: For information on proposed resolutions, decisions, and other agenda items, contact the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, MS–IA, Falls Church, VA 22041; and for information on species proposals, contact the Division of Scientific Authority, 5275 Leesburg Pike, MS–IA, Falls Church, VA 22041. Our regulations governing this public process are found in the Code of Federal Regulations (CFR) at 50 CFR 23.87. Pursuant to 50 CFR 23.87(a)(3)(iii), with this notice we are posting on *http://www.regulations.gov* (see Docket No. FWS–HQ–IA–2014–0018) and on our Web site (*http://www.fws.gov/international/publications-and-media/federal-register-notices.html*) a summary of our proposed negotiating positions on the items included in the CoP17 agenda and proposed amendments to the Appendices, and the reasons for our proposed positions.

Announcement of Provisional Agenda for CoP17

The provisional agenda for CoP17 is currently available on the CITES Secretariat's Web site at *http://www.cites.org/eng/cop/17/doc/index.php.* The working documents associated with the items on the provisional agenda, including proposed resolutions, proposed decisions, and discussion documents, are also available on the Secretariat's Web site. To view the working document associated with a particular agenda item, access the provisional agenda at the above Web site, locate the particular agenda item, and click on the document link for that agenda item in the column entitled "Document." Finally, the species proposals that will be considered at CoP17 are also available on the Secretariat's Web site. Proposals for amendment of Appendices I and II can be accessed at the web address given above.

Tentative Negotiating Positions

On *http://www.regulations.gov* (see Docket No. FWS–R9–IA–2014–0018) and on our Web site (*http://www.fws.gov/international/publications-and-media/federal-register-notices.html*), we summarize the tentative U.S. negotiating positions on proposals to amend the Appendices (species proposals), draft resolutions and decisions, and agenda items that have been submitted by other countries and the CITES Secretariat. Documents submitted by the United States either alone or as a co-proponent for consideration by the Parties at CoP17 can be found on the Secretariat's Web site at: *http://www.cites.org/eng/cop/17/doc/index.php.* Those documents are: CoP17 Docs. 18.1, 27, 40, and 52, and (co-sponsored with South Africa) Doc. 20. The United States, either alone or as a co-proponent, submitted the following proposals to amend Appendices I and II: CoP17 Props. 9–12, 19, 27, 36, 44, 48, 52, 60, and 62. We will not provide any additional explanation of the U.S. negotiating positions for documents and proposals that the United States submitted. The introduction in the text of each of the documents the United States submitted contains a discussion of the background of the issue and the rationale for submitting the document.

Available Information on CoP17

Information concerning the results of CoP17 will be available after the close of the meeting on the Secretariat's Web site at *http://www.cites.org,* or upon request from the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above), or on our Web site (*http://www.fws.gov/international/cites/cop17*).

Author

The primary author of this notice is Clifton A. Horton, Division of Management Authority.

Authority

This notice is issued under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 15, 2016.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2016–23008 Filed 9–22–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 L10100000 PH0000 LXSIANMS0000 MO 4500099092]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Western Montana Resource Advisory Council meeting will be held October 13–14, 2016 in Missoula, Montana. The October 13 meeting will begin at 9:00 a.m. in the Missoula Field Office conference room, with a 30-minute public comment period starting at 11:30 a.m., and will adjourn at 3:00 p.m. The second day of the meeting, October 14, will consist of a field trip to various points of interest within the Missoula Field Office's jurisdiction.

ADDRESSES: BLM's Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior through the BLM on a variety of management issues associated with public land management in Montana. During this meeting the council will discuss several topics, including updates from the BLM's Butte, Missoula and Dillon field offices. All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Authority: 43 CFR 1784.4–2.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2016–22840 Filed 9–22–16; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21884; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before August 27, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 11, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 27, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ARIZONA

Maricopa County

Hilvert, Fred G., House, 106 E. Country Club Dr., Phoenix, 16000700

DISTRICT OF COLUMBIA

District of Columbia

Federal Home Loan Bank Board Building (FHLBB), 1700 G St. NW., Washington, 16000701

KANSAS

Cowley County

Weigle Barn, (Agriculture-Related Resources of Kansas MPS) 14097 189th Rd., Burden, 16000702

Crawford County

Fourth and Broadway Historic District, 401–424 N. Broadway, 105 and 121 E. 4th Sts., Pittsburg, 16000703

Ellis County

Brungardt—Dreiling Farmstead, (Agriculture-Related Resources of Kansas MPS) 2567 Golf Course Rd., Victoria, 16000704

Marion County

Donahue's Santa Fe Trail Segment, (Santa Fe Trail MPS) Address Restricted, Durham, 16000705

Marshall County

Marysville Union Pacific Depot, 000 Hedrix Ave. (at Alston St.), Marysville, 16000709

McPherson County

Rosberg—Holmgren—Clareen Block (Boundary Increase and Additional Documentation), 109–111–113 N. Main St., Lindsborg, 16000706

Sedgwick County

Knightley's Parking Garage, 303 S. Broadway, Wichita, 16000707

Shawnee County

Santa Fe Hospital, 600 SE Madison St., Topeka, 16000708

LOUISIANA

Orleans Parish

Bank of New Orleans (BNO) Building, 1010 Common St., New Orleans, 16000712
D'Antonio, Guy J. and Rose Caruso, House, 2621 O'Reilly St., New Orleans, 16000710
Treme Market, 1508 Orleans Ave., New Orleans, 16000711

MASSACHUSETTS

Worcester County

District No. 4 School, 191 East St., Petersham, 16000713

SOUTH CAROLINA

Chester County

Phinney, James, House, 2762 Blaney Rd., Chester, 16000714

Oconee County

Oconee County Courthouse, 211 W. Main St., Walhalla, 16000715

TEXAS

Austin County

San Felipe de Austin Historic and Archeological District, 15945 FM 1458, San Felipe, 16000716

El Paso County

Magoffin Historic District, Roughly bounded by San Antonio, Virginia, Myrtle, and Cotton Sts., El Paso, 16000717

Grayson County

Eisenhower Birthplace, 720 S. Lamar, Denison, 16000718

Lampasas County

Markward Homestead, 101 East FM 580, Lampasas, 16000719

Travis County

Austin Fire Drill Tower, 201 W. Cesar Chavez St., Austin, 16000720

A request for removal has been made for the following resource:

VIRGINIA

Buchanan County

Whitewood High School, 17424 Dismal River Rd., Whitewood, 08000893

Authority: 60.13 of 36 CFR part 60.

Dated: September 6, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–22918 Filed 9–22–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–OPH–21706; PPWOVPADH0, PPMPRHS1Y.Y00000 (166)]

Proposed Information Collection; National Park Service Office of Public Health Temporary Food Event Permit Program

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before November 22, 2016.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Mail Stop 242), Reston, VA 20192 (mail); or via email at *madonna_baucum@nps.gov.* Please include "1024–New TFE Permits" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Captain Sara B. Newman, National Park Service, 1201 Eye Street NW., Washington, DC 20005; or via email at *sara_newman@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. With over 400 NPS sites and hundreds of millions of visits per year, a large potential exists for exposure to disease agents within the NPS system. The NPS Office of Public Health (OPH) is an internal agency-specific public health capability, managed, funded and operated by NPS. This program is primarily staffed with commissioned corps officers on detail to the agency from the United States Public Health Service and is a national activity headquartered in Washington, DC with field staff located across the NPS system. Through disease surveillance and response, on-site evaluation/hazard analysis, consultation, policy guidance, and coordination with local, state and other federal health jurisdictions, OPH professionals assist park superintendents in protecting and promoting visitor health in the frontcountry and backcountry/wilderness. (NPS Management Policy 2006, 8.2.5.6)

Many special events that involve serving food to the public occur on NPS lands each year. The Food and Drug Administration (FDA) 2013 Food Code mandates that regular food safety inspections occur for Temporary Food Event (TFE) food service on NPS lands. To reduce the risk of foodborne illness, chemical poisoning, and accidental injury, OPH field staff assist park units with the identification and reduction or elimination of public health hazards associated with TFEs through permiting, consultation, and on-site evaluations of TFE facilities.

The TFE Permit Program was designed and implemented to protect and promote the health and safety of event attendees by requiring food safety training and inspection of food vendors. Several parks and regions have customized versions of the TFE forms. These customized versions of the forms are necessary due to unique local relationships with park partners and local jurisdictions, the frequency of TFE activity (often weekly), the type and level of risk of the food being served, and the extremely high volume of visitors served. The NPS utilizes the below listed forms in conjunction with the TFE Permit Program:

Form 10–675 "Application for TFE Permit"—Information collected via the 10–675 gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. The following information is collected:

- Operator Contact Information—needed for communication with prospective operators during the review process.
- Proposed Menu—needed to assess potential risks inherent to food categories.
- Proposed Food Sources—needed to ensure that operators a utilizing approved food sources.
- Proposed Preparation Methods—needed to assess whether the proposed equipment and facility are adequate to protect food safety during preparation, transport, holding and service.
- Proposed Food Preparation Sites—needed to assess whether proposed preparation sites meet Food Code requirements and provide adequate facilities for sanitary food production.
- Proposed TFE Site Equipment & Layout—needed to gather information about proposed TFE facilities, utilities, equipment and layout to assess whether the proposal contains adequate facilities and equipment to meet Food Code requirements and provide for sanitary food production.

Form 10–675A "Permit Application for a Temporary Food Establishment" (TFE)—Information collected via the 10–675A, used specifically by the National Mall and Memorial Parks in Washington, DC, gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. Information collected via the 10–675A includes:

- Instructions and Signature Page—helps ensure that the TFE applicant has read the instructions and agrees to comply with requirements.
- Part A—gathers contact information and type of TFE permit being applied for.
- Part B—gathers proposed menu items and assesses potential risks inherent to food categories.
- Part C—gathers proposed food preparation methods and assesses whether the proposed equipment and facility are adequate to protect food safety during preparation, transport, holding, and service.
- Part D and E—gathers information about proposed TFE facilities, utilities, equipment and layout to assess whether the proposal contains adequate facilities and equipment to meet Food Code requirements and provide for sanitary food production.
- Part F—obtains proof of official agreement for use of required off-site facilities.

Form 10–675B "Temporary Food Event (TFE) Vendor Application"—Information collected via the 10–675B, used specifically by the Gateway National Recreation Area in New York City, NY, gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. Information collected via the 10–675B includes:

- Event and Vendor Contact Information—needed for communication with prospective operators during the review process.
- Proposed Menu Items—assesses potential risks inherent to food categories.
- Food Temperature Control Methods—assesses the ability of the vendor to provide control of critical food temperatures.
- TFE Facilities and Utilities—assesses adequacy of facilities for handwashing, cleaning and sanitizing of equipment and utensils, adequate disposal of wastewater, and adequate supply of potable water.
- Documentation—requests necessary documentation of licensed approved food preparation facilities and adequate food safety training.
- Vendor Consent and Signature—obtains vendor's consent to terms of the permit.

Form 10–675C "Food Vendor Application—Fort Mason Center"—Information collected via the 10–675C, used specifically by the Fort Mason Center at Golden Gate National Recreation Area in San Francisco, CA, gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. Information collected via the 10–675C includes:

- Contact Information—needed for communication with prospective TFE organizers, vendors, and off-site establishments used for TFE food preparation.
- TFE Facilities and Utilities—assesses adequacy of facilities for handwashing, cleaning and sanitizing of equipment and utensils, adequate disposal of wastewater, and adequate supply of potable water.
- Food Temperature Control Methods—assesses the ability of the

vendor to provide control of critical food temperatures.

- Proposed Menu Items—assesses potential risks inherent to food categories.
- Documentation—requests necessary documentation of licensed approved food preparation facilities and adequate food safety training.
- Vendor Consent and Signature—obtains vendor's consent to terms of the permit.

Form 10–675D "Food Vendor Application and Permit—Special Use Permit for Temporary Food Events"—Information collected via the 10–675D, used specifically by the Golden Gate National Recreation Area in San Francisco, CA, gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. Information collected via the 10–675C includes:

- Contact Information—needed for communication with prospective TFE organizers, vendors, and off-site establishments used for TFE food preparation.
- TFE Facilities and Utilities—assesses the adequacy of facilities for handwashing, cleaning and sanitizing of equipment and utensils, adequate disposal of wastewater, and adequate supply of potable water.
- Food Temperature Control Methods—assesses the ability of the vendor to provide control of critical food temperatures.
- Proposed Menu Items—assesses potential risks inherent to food categories.
- Documentation—requests necessary documentation of licensed approved food preparation facilities and adequate food safety training.
- Vendor Consent and Signature—obtains vendor's consent to terms of the permit.
- Offsite Licensed Food Establishment Owners Agreement—ensures food served at the TFE, but prepared offsite, is prepared in a licensed foodservice facility or commissary.

Form 10–675E "High Risk Food Vendor Application and Permit—Special Use Permit for Temporary Food Events"—Information collected via the 10–675E, used specifically by the Golden Gate National Recreation Area in San Francisco, CA, gathers information from prospective TFE operators to assess the menu, food sources, food preparation methods, food preparation sites and equipment for compliance with the FDA Food Code. Information collected via the 10–675C includes:

- Contact Information—needed for communication with prospective TFE organizers, vendors, and off-site establishments used for TFE food preparation.
- TFE Facilities and Utilities—assesses the adequacy of facilities for handwashing, cleaning and sanitizing of equipment and utensils, adequate disposal of wastewater, and adequate supply of potable water.
- Food Temperature Control Methods—assesses the ability of the vendor to provide control of critical food temperatures.
- Proposed Menu Items—assesses potential risks inherent to food categories.
- Documentation—requests necessary documentation of licensed approved food preparation facilities and adequate food safety training.
- Vendor Consent and Signature—obtains vendor's consent to terms of the permit.
- Offsite Licensed Food Establishment Owners Agreement—ensures food served at the TFE, but prepared offsite, is prepared in a licensed foodservice facility or commissary.

Form 10–676 "Temporary Food Event Coordinator's Application"—Information collected via the 10–676 gathers information about the TFE event and the event organizer and conveys information to the event organizer about the conditions of the TFE Permit. Information collected via the 10–676 includes:

- Event Coordinator and Sponsoring Organization contact information
- Event Information—location, number of vendors, dates, times etc.

Form 10–676C "Event Organizer Application and Permit—Fort Mason Center"—Information collected via the 10–676C, used specifically by the Fort Mason Center at Golden Gate National Recreation Area in San Francisco, CA, gathers information about the TFE event and the event organizer and conveys information to the event organizer about the terms and conditions of the TFE Permit. Information collected via the 10–676C includes:

- Event Coordinator and Sponsoring Organization contact information
- Event Information—location, number of vendors, dates, times etc.
- Signatures

Form 10–676D "PP Event Organizer TFE Application and Permit—Special Use Permit for Temporary Food Events"—Information collected via the 10–676D, used specifically by the Golden Gate National Recreation Area in San Francisco, CA, gathers information about the TFE event and the event organizer, and conveys information to the event organizer about the terms and conditions of the TFE Permit and provide permit fee information. Information collected via the 10–676 includes:

- Event Coordinator and Sponsoring Organization contact information
- Event Information—location, number of vendors, dates, times etc.
- Signatures

Form 10–676E "SPUG Event Organizer TFE Application and Permit—Special Use Permit for Temporary Food Events"—Information collected via the 10–676E, used specifically by the Golden Gate National Recreation Area in San Francisco, CA, gathers information about the TFE event and the event organizer, and conveys information to the event organizer about the terms and conditions of the TFE Permit and provide permit fee information. Information collected via the 10–676E includes:

- Event Coordinator and Sponsoring Organization contact information
- Event Information—location, number of vendors, dates, times etc.
- Signatures

Form 10–677 "Garden Questionnaire"—Information collected via the 10–677 gathers environmental health information about garden plots and local growers of produce which NPS concessions operations wish to utilize as an approved food source within their foodservice operations. This information is required because these sources of produce are not licensed by a local, state, or federal jurisdiction and would not normally meet the definition of an "approved source" in the FDA Food Code. The Information collected via the 10–677 includes:

- A—Garden Plot Location & Protection from Environmental Contamination
- B—Personal Hygiene Practices & Hygienic Facilities
- C—Plant & Seed Sources
- D—Water Source For Irrigation
- E—Herbicide & Insecticide Use
- F—Harvest & Preparation Practices
- G—NPS Compliance Information for Gardens Located on Park Property
- Signatures

II. Data

OMB Control Number: 1024–New.

Title: National Park Service Office of Public Health Temporary Food Event Permit Program.

Service Form Number(s): NPS Forms 10–675, 10–675A, 10–675B, 10–675C, 10–675D, 10–675E, 10–676, 10–676C, 10–676D, 10–676E, 10–677, and 10–678.

Type of Request: Existing collection in use without OMB approval.

Description of Respondents: Commercial vendors serving food to the public occur on Park Service property.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Activity	Estimated annual number of respondents	Estimated annual number of responses	Estimated completion time per response	Estimated total annual burden hours
Form 10–675, "Application for a TFE Permit"	54	84	1.5	126
Form 10–675A, "Permit Application for a Temporary Food Establishment (TFE)"	30	40	2	80
Form 10–675B, "Temporary Food Event (TFE) Vendor Application"	20	40	1	40
Form 10–675C, "Food Vendor Application—Fort Mason Center"	700	1000	1	1000
Form 10–675D, "Food Vendor Application and Permit—Special Use Permit for Temporary Food Events"	20	25	1	25
Form 10–675E, "High Risk Food Vendor Application and Permit—Special Use Permit for Temporary Food Events"	12	12	1	12
Form 10–676, "Temporary Food Event Coordinator's Application"	5	5	1	5
Form 10–676C, "Event Organizer Application and Permit—Fort Mason Center"	90	90	1	90
Form 10–676D, "PP Event Organizer TFE Application and Permit—Special Use Permit for Temporary Food Events"	4	8	1	8
Form 10–676E, "SPUG Event Organizer TFE Application and Permit—Special Use Permit for Temporary Food Events"	12	12	1	12
Form 10–677, "Garden Questionnaire"	2	2	5.25	10.50
Totals	949	1,318	....	1,408.50

Estimated Annual Nonhour Burden Cost: $47,948. Currently, Golden Gate National Recreation Area (NRA) is the only park charging fees for temporary food permits. The park issues 839 total permits per year totaling $47,948 (Fort Mason Center = $45,249 (808 permits × $56 per form/permit) and Partner Events = $2,700 (30 permits × $90 per form/permit)).

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 19, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–22914 Filed 9–22–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–554 and 731–TA–1309 (Final)]

Biaxial Integral Geogrid Products From China; Revised Schedule for Hearing in Final Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: Effective September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Hangyul Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 22, 2016, the Commission established a schedule for conducting the final phase of investigations on certain biaxial integral geogrid products from China (81 FR 63495 September 15, 2016). The Commission is revising its schedule by changing the date of the hearing.

The Commission's new schedule for the hearing in these investigations is as follows: The hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 21, 2016. All other aspects of the schedule remain unchanged.

For further information concerning these investigations see the Commission's notice cited above.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22940 Filed 9–22–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Audio Processing Hardware, Software, and Products Containing the Same, DN 3175;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)) filed on behalf of Andrea Electronics Corp. on September 19, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio processing hardware, software, and products containing the same. The complaint names as respondents Apple Inc. of Cupertino, CA; Samsung Electronics Co., Ltd. of Korea; and Samsung Electronics America, Inc. of Ridgefield Park, NJ. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3175") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

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[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: September 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–22991 Filed 9–22–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2016–055]

Freedom of Information Act (FOIA) Advisory Committee; Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App) and the second United States Open Government National Action Plan (NAP) released on December 5, 2013, NARA announces an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting.

DATES: The meeting will be October 25, 2016, from 10:00 a.m. to 1:00 p.m. EDT. You must register for the meeting by 5:00 p.m. EDT on October 23, 2016.

LOCATION: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW.; Archivist's Reception Room (Room 105); Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kate Russ, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5783, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: You may find all meeting materials at *https://ogis.archives.gov/foia-advisory-committee/2016-2018-term/Meetings.htm.* The purpose of this meeting is to discuss the FOIA issues on which the Committee is focusing its efforts.

Procedures: The meeting is open to the public. Due to access procedures, you must register in advance if you wish to attend the meeting. You will also go through security screening when you enter the building. Seating in the meeting room is limited and will be available on a first-come, first-served basis. Registration for the meeting will go live via Eventbrite on October 3, 2016, at 10:00 a.m. EDT. To register for the meeting, please do so at this Eventbrite link: *https://www.eventbrite.com/e/freedom-of-information-act-foia-advisory-committee-meeting-october-25-2016-registration-27600140764.*

To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202–741–5783. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kate Russ at the phone number, mailing address, or email address listed above.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2016–22893 Filed 9–22–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on extensions of previously approved collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before November 22, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collections to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0094.

Title: Suspicious Activity Report by Depository Institutions.

Abstract: The Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, was granted broad authority to require suspicious transaction reporting under the Bank Secrecy Act (BSA) (31 U.S.C. 5318(g)). FinCEN joined with the bank regulators in adopting and requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form. This simplified the process through which banks inform their regulators and law enforcement about suspected criminal activity. In 2011, FinCEN transitioned from industry specific paper forms to one electronically filed dynamic and interactive BAS–SAR for use by all filing institutions.

Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's BSA E-filing system by credit unions. A SAR is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days. FinCEN and law enforcement agencies use the information on BSA–SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

Adjustments in burden are due to an increase in total filings of suspicious activity by federally insured credit unions. The decrease in burden is due to adjustments made to the reporting and recordkeeping burden to align with FinCEN requirements.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents/Recordkeepers: 5,887.

Estimated No. of Responses per Respondent: 14.24.

Estimated Annual Responses: 83,859.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 83,859.

OMB Number: 3133–0167.

Title: Foreign Branching; 12 CFR 741.11.

Abstract: Pursuant to Part 741, Section 741.11 of the NCUA Rules and Regulations, an insured credit union that wishes to establish a branch office outside the United States (other than branches located on United States military installations or embassies) must apply for and receive approval from the NCUA regional director before establishing that branch. The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, including conservatorship and liquidation actions.

It is NCUA's understanding that no Federally Insured Credit Unions have sought to open any branches covered by this requirement over the last three years. However, we are seeking to maintain the OMB control number in the event that a credit union wishes to exercise this option.

This information is necessary to evaluate the safety and soundness of the decision to open the branch and to protect the interests of the National Credit Union Share Insurance Fund.

Type of Review: Extension of a previously approved collection.

Estimated No. Respondents: Federally-insured credit unions.

Estimated No. of Respondents: One.

Frequency of Response: Once per foreign branch.

Estimated Burden Hours per Response: 32.

Estimated Total Annual Burden Hours: 32.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By John Brolin, Acting Secretary of the Board, the National Credit Union Administration, on September 19, 2016.

Dated: September 19, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–22913 Filed 9–22–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Assistant Chief of Staff, Administration invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 60 days from the date of this publication.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Assistant Chief of Staff, Administration publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 19, 2016.

Samantha Jones,

Assistant Chief of Staff, Administration, National Mediation Board.

Application for Mediation Services

Type of Review: Extension.

Title: Application for Mediation Services, OMB Number: 3140–0002.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 50 annually.

Burden Hours: 12.50.

Abstract: Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First, provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR1203.1 provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

The extension of this form is necessary considering the information provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruptions to public service. Since 1980, only slightly more than 1 percent of cases have involved a disruption of service. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the email address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Samantha Jones at 202–692–5010 or via internet address *jones@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2016–22892 Filed 9–22–16; 8:45 am]

BILLING CODE 7550–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering #1170.

Date/Time: October 19, 2016; 12:00 p.m. to 6:15 p.m., October 20, 2016; 8:30 a.m. to 12:45 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, Virginia 22230.

Type of Meeting: OPEN.

Contact Person: Evette Rollins, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; 703–292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Wednesday, October 19, 2016

- Directorate for Engineering Report
- NSF Big Ideas
- Perspective from the Director's Office
- Future of Center-scale Multidisciplinary Engineering Research: Study Update
- Division of Engineering Education and Centers (EEC) Overview
- EEC Committee of Visitors Report

Thursday, October 20, 2016

- Small Business Innovation Research Subcommittee Report
- Division of Industrial Innovation and Partnerships (IIP) Overview
- IIP Committee of Visitors Report
- NSF INCLUDES/CEOSE Workshop Report
- NSF Strategic Planning Process
- Roundtable on Big Ideas and Strategic Recommendations for ENG

Dated: September 20, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–22917 Filed 9–22–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Strategy and Budget, Subcommittee on Facilities (SCF), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Friday, September 30, 2016 at 1:00 to 2:00 p.m. EDT. Closed session: 1:00 to 1:15 p.m.; open session: 1:15 to 2:00 p.m.

SUBJECT MATTER: Closed meeting subject: Discussion of LFO bi-monthly facility reports. Open meeting subjects: Chairman's remarks; progress on NSB/NSF joint Facilities roles and responsibilities framework; and discussion of facility-related information products.

STATUS: Partly open, partly closed.

This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public audio stream will be available for the public portion of the meeting. Request the link by contacting *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. Please refer to the National Science Board Web site for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/*. The point of contact for this meeting is Elise Lipkowitz, *elipkow@nsf.gov*.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2016–23108 Filed 9–21–16; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: September 30, 2016 from 2:00–3:00 p.m. EDT.

SUBJECT MATTER: (1) Approval of prior minutes; (2) Committee Chair's Opening Remarks; (3) Discussion of NSF 2018–2022 Strategic Plan.

STATUS: Closed.

This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.* Point of contact for this meeting is: Kathy Jacquart, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2016–23107 Filed 9–21–16; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Apr 1400; Notice of Meeting

The ACRS Subcommittee on APR 1400 will hold a meeting on October 4, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, October 4, 2016—8:30 a.m. until 5:00 p.m.

The Subcommittee will review the APR 1400 Safety Evaluation Reports with open items Chapters 2 (2.3 Meteorology), 10 (Steam and Power Conversion Systems), and 11 (Radioactive Waste Management). The Subcommittee will hear presentations by and hold discussions with the NRC staff and Korea Hydro & Nuclear Power Company regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: September 15, 2016.

Mark L. Banks,

Chief, Technical Support Branch. Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–22982 Filed 9–22–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures;

Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 5, 2016, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 5, 2016—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: September 15, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–22984 Filed 9–22–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–228; NRC–2012–0286]

Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Consideration of Approval of Indirect License Transfer and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect license transfer; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Aerotest Operations, Inc. (Aerotest), and Nuclear Labyrinth LLC (Nuclear Labyrinth), on May 30, 2012. The application seeks NRC approval of the indirect transfer of Facility Operating License No. R–98 for Aerotest Radiography and Research Reactor (ARRR), currently held by Aerotest, to Nuclear Labyrinth. The NRC is also considering amending the license for administrative purposes to reflect the proposed indirect transfer. Because the application contains sensitive unclassified non-safeguards information (SUNSI) an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by October 24, 2016. A request for a hearing must be filed by October 13, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by October 3, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0286. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677. For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Edward Helvenston, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–4067; email: *Edward.Helvenston@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2012–0286 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0286.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0286 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under 10 CFR 50.80, "Transfer of licenses," approving the indirect transfer of control of Facility Operating License No. R–98 for the ARRR currently held by Aerotest, as owner and licensed operator of the ARRR. Aerotest is a wholly-owned subsidiary of OEA Aerospace, Inc., a wholly-owned subsidiary of OEA, Inc., which, in turn, is a wholly-owned subsidiary of Autoliv ASP, Inc. The ultimate owner is Autoliv, Inc. The indirect transfer would involve the transfer of ownership of Aerotest from OEA Aerospace, Inc., to Nuclear Labyrinth. The NRC is also considering amending the license for administrative purposes to reflect the proposed indirect transfer.

According to an application dated May 30, 2012 (ADAMS Accession No. ML12180A384), as supplemented by letters dated July 19, 2012, October 15, 2012, January 10, 2013, April 21, 2016, June 16, 2016, and August 22, 2016 (ADAMS Accession Nos. ML122021201, ML12291A508, ML13015A395, ML16117A259, ML16176A221, and ML16245A230, respectively), Aerotest and Nuclear Labyrinth (collectively, "the applicants") seek approval, under 10 CFR 50.80, of the indirect transfer of control of the license for the ARRR. The indirect transfer of control would result from the acquisition of Aerotest by Nuclear Labyrinth through a stock transfer. Nuclear Labyrinth would indirectly own 100 percent of the ARRR through its ownership of Aerotest. There would be no direct transfer of the license. Aerotest would continue to own and operate the facility and hold the license.

By the application dated May 30, 2012, as supplemented by letters dated July 19, 2012, October 15, 2012, and January 10, 2013, Aerotest and Nuclear Labyrinth originally requested NRC consent for the indirect transfer currently under consideration. By letter dated July 24, 2013 (ADAMS Accession Nos. ML13120A598 and ML13129A001), the NRC staff denied the applicants' indirect transfer application on the grounds that the applicants had failed to satisfy the NRC's financial qualifications requirements and that the applicants had not shown that there would be sufficient funds to cover the annual cost of fuel storage until the U.S. Department of Energy accepts the fuel. The applicants filed a joint demand for a hearing on the denial and, on August 12, 2014, a hearing was conducted, at which the applicants presented new information, relevant to the indirect transfer application, which had not previously been provided to the NRC staff. A listing of all information considered at the hearing, including new information provided by the applicants, can be found in ADAMS under Accession No. ML14248A614. Based on the information presented by the applicants and the NRC staff at the hearing, the Commission issued an order, dated December 23, 2015, which can be found in ADAMS under Accession No. ML15357A201, remanding the license transfer application to the NRC staff for further consideration. Subsequently, the applicants further supplemented the application by letters dated April 21, 2016, June 16, 2016, and August 22, 2016.

No physical changes to the ARRR facility or operational changes are being proposed in the application. Except for the installation of Dr. David Slaughter as president of Aerotest, no management or organizational changes are being proposed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed indirect transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, "Generic determination regarding license amendments to reflect transfers," unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305, "Written comments." The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 20 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 13, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852.

The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 20 days after the requestor is provided access to that information.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) an officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have proposed contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 19th day of September, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
20	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI. (+25 Answers to petition for intervention; +7 petitioner/requestor reply).

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[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding—Continued

Day	Event/activity
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 23	Deadline for submission of contentions whose development depends upon access to SUNSI.
A + 48	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 55	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 55	Decision on contention admission.

[FR Doc. 2016–23016 Filed 9–22–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0023]

Information Collection: Access Authorization

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Access Authorization."

DATES: Submit comments by October 24, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0023 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0023. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0023 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession ML16172A106.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC 2016–0023 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Access Authorization." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 23, 2016 (81 FR 15574).

1. *The title of the information collection:* Part 25 of title 10 of the *Code of Federal Regulations,* "Access Authorization."
2. *OMB approval number:* 3150–0046.
3. *Type of submission:* Extension.
4. *The form number if applicable:* N/A.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
7. *The estimated number of annual responses:* 330.
8. *The estimated number of annual respondents:* 78.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 158.
10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC-classified information and material.

Dated at Rockville, Maryland, this 20th day of September, 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–22920 Filed 9–22–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0271]

Geologic Trench Excavations for Paleoliquefaction Study at Dyer County, Tennessee Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has prepared an environmental assessment (EA) to evaluate the potential environmental impacts that may arise as a result of excavating trenches to observe geologic features for a paleoliquefaction research project at a site located in Dyer County, Tennessee. The NRC has concluded that a finding of no significant impact (FONSI) is appropriate.

DATES: The EA and FONSI referenced in this document are available September 23, 2016.

ADDRESSES: Please refer to Docket ID NRC–2012–0271 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The EA and the associated FONSI are publicly available in ADAMS under Accession No. ML16257A012.
- *PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Sarah Tabatabai, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2382; email: *Sarah.Tabatabai@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is performing a paleoliquefaction research project at a site in Dyer County, which is located in northwestern Tennessee, to characterize past earthquakes in the central and eastern United States. Paleoliquefaction is a term describing specific geologic features attributed to seismic events that occurred before ground-motion measurements were taken or before detailed records were kept. Paleoliquefaction studies facilitate preparing and planning for future earthquakes by determining when past earthquakes occurred, along with their frequency and size. Liquefaction is the transformation of saturated granular material from a solid to a liquefied state as a result of increased pore-water pressure; thus, it leaves evidence behind in the geologic record. Typically the liquefied soil manifests as sand in the form of sand dikes (when the liquefied sand intrudes existing cracks or fissures) or sand blows (when the liquefied sand erupts and spills over). The results from this research will be used to update models implemented in probabilistic seismic hazard analyses to characterize ground motion at new nuclear power plant sites in accordance with section 100.23(d)(1) of title 10 of the *Code of Federal Regulations* (10 CFR). The results of this research may also implemented to re-evaluate seismic hazards at existing nuclear power plant sites.

The research project will entail the excavation of four trenches by a backhoe at the project site. Each trench will measure about 3 feet wide (*i.e.,* the width of a backhoe bucket), 5 feet deep, and range in length from 33 to 82 feet long. The proposed trenches are intentionally sited to enable the study of earthquake-induced liquefaction features. The excavation of the four trenches will be conducted by an NRC contractor. The estimated study time during which the trenches will remain in existence is approximately 2 weeks. The trenches will be backfilled at the conclusion of this study.

The NRC has prepared an EA to evaluate the potential environmental impacts that may arise as a result of this research project in accordance with the requirements of 10 CFR part 51, of the NRC's regulations that implement Section 102(2) of the National Environmental Policy Act of 1969, as amended. Based on the EA, and in accordance with 10 CFR 51.31(a), the NRC has concluded that a FONSI is appropriate. Geologic trenching this project will commence following publication of this Notice.

II. EA Summary

The NRC has prepared the EA to evaluate the potential environmental impacts of the excavation of four trenches at the project site. In accordance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the NRC staff requested informal consultation with the United States Fish and Wildlife Service. No concerns were identified for Federally listed species or designated critical habitat. This project is temporary, minimally invasive, and will occur outside the critical nesting times for migratory birds.

The NRC determined that there will be no adverse effects to any historic or cultural resources that may be located at the Pritchett site.

The NRC has determined that there will be no significant impacts to any other resource areas (*e.g.*, surface water, groundwater, air quality) as a result of the proposed trench excavations, followed by the backfilling of these trenches at the conclusion of the study.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed work and has determined not to prepare an environmental impact statement. The EA and the associated FONSI are publicly available in ADAMS under Accession No. ML16257A012.

Dated at Rockville, Maryland this 15 day of September, 2016.

For the Nuclear Regulatory Commission.

John P. Burke,

Chief, Structural, Geotechnical, and Seismic Engineering Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–22987 Filed 9–22–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32265; File No. 812–14410]

Altegris KKR Commitments Master Fund, et al.; Notice of Application

September 19, 2016.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (“BDC”) and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Altegris KKR Commitments Master Fund (the “Company”); Altegris Advisors, L.L.C.; StepStone Group LP (“StepStone Group”); StepStone Group Real Assets LP, StepStone Group Real Estate LP, StepStone AMP (GP), LLC, StepStone Atlantic (GP), L.P., StepStone Capital III (GP), LLC, StepStone European Fund GP S.à r.l., StepStone Ferro (GP), LLC, StepStone K Opportunities (GP), LLC, StepStone Secondaries II (GP), LLC, StepStone Secondaries III (GP), S.à r.l., StepStone Secondaries III (GP), LLC, StepStone UWF Secondaries (GP), L.P., StepStone KF (GP), LLC, StepStone NPS Siera (GP), LLC, StepStone NPS PE (GP), LLC, StepStone Rivas (GP), LLC, StepStone FSS (GP), LLC, StepStone REP III (GP), LLC (collectively, with StepStone Group, the “Existing StepStone Affiliated Advisers”); CGR/PE, LLC, StepStone AMP Opportunities Fund, L.P., StepStone Atlantic Fund, L.P. — Private Markets Series 1 2014, StepStone Capital Partners III, L.P., StepStone Capital Partners III Offshore Holdings, L.P., SCP III Holding SCS, StepStone Ferro Opportunities Fund, L.P., StepStone K Strategic Opportunities Fund II, L.P., StepStone Secondary Opportunities Fund II Offshore Holdings, L.P., StepStone Secondary Opportunities Fund II, L.P., StepStone Secondary Opportunities Fund III Offshore Holdings, SCSp, StepStone Secondary Opportunities Fund, III, L.P., StepStone UWF Secondary Opportunities Fund, L.P., StepStone KF Infrastructure Fund, L.P., StepStone KF Private Equity Fund, L.P., StepStone NPS Infrastructure Fund, L.P., StepStone NPS Private Equity Fund, L.P., StepStone Rivas Private Equity Fund, L.P., StepStone FSS Opportunities Fund, L.P., Lexington C/RE, LLC, and StepStone Real Estate Partners III, L.P. (collectively, the “Existing Affiliated Investors”).

FILING DATES: The application was filed on December 31, 2014, and amended on May 21, 2015, August 6, 2015, October 6, 2015, April 29, 2016, July 6, 2016 and September 16, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 14, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: Altegris Advisors, L.L.C. and the Company: 1200 Prospect Street, Suite 400, La Jolla, CA 92037; the Existing StepStone Affiliated Advisers and the Existing Affiliated Investors: 885 Third Avenue, 17th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Robert Shapiro, Senior Counsel, at (202) 551–7758 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel’s Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants’ Representations

1. The Company was organized under Delaware law as a statutory trust for the purpose of operating as an externally-managed, non-diversified, closed-end management investment company. The Company is a registered investment company under the Act. The Company’s Objectives and Strategies[1] are to seek long-term capital appreciation and the Company intends to allocate at least 80% of its assets to private equity-type investments sponsored or advised by Kohlberg Kravis Roberts & Co. L.P. (“Kohlberg Kravis Roberts”) or an affiliate of Kohlberg Kravis Roberts (collectively with its affiliates, “KKR”), including primary offerings and secondary acquisitions of interests in

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[1] “Objectives and Strategies” means a Regulated Entity’s (as defined below) investment objectives and strategies, as described in the Regulated Entity’s registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933 (the “Securities Act”), or under the Securities Exchange Act of 1934, and the Regulated Entity’s reports to shareholders.

alternative investment funds that pursue private equity strategies and co-investment opportunities in operating companies presented by such KKR investment funds. The Company may at any time determine to allocate its assets to investments not sponsored, issued by or otherwise linked to, KKR, or its affiliates and to strategies and asset classes not representative of private equity. The Company has a five member Board,[2] which currently includes four persons who are not "interested persons" of the Company within the meaning of section 2(a)(19) of the Act.

2. Altegris Advisors, L.L.C. is a Delaware limited liability company and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Altegris Advisors, L.L.C. serves as the investment adviser to the Company.

3. StepStone Group is a Delaware limited partnership and is registered with the Commission as an investment adviser under the Advisers Act. StepStone Group serves as the sub-adviser to the Company.

4. Each Existing Affiliated Investor is a privately-offered fund that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An Existing StepStone Affiliated Adviser serves as the investment adviser to each Existing Affiliated Investor. Each Existing StepStone Affiliated Adviser either directly or indirectly controls, is controlled by, or is under common control with StepStone Group, and is registered as an investment adviser under the Advisers Act.

5. Applicants seek an order ("Order") to permit one or more Regulated Entities[3] and/or one or more Affiliated Investors[4] to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, "Co-Investment Transaction" means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.[5] The term "Advisor" means any Altegris Advisor or any StepStone Affiliated Adviser.

6. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary.[6] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Investor because it would be a company controlled by its parent Regulated Entity for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated Entity were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Entity's investments and, therefore, no conflicts of interest could arise between the Regulated Entity and the Wholly-Owned Investment Subsidiary. The Regulated Entity's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Entity's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Entity's place. If the Regulated Entity proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Entity and the Wholly-Owned Investment Subsidiary.

7. It is anticipated that the StepStone Affiliated Advisers will periodically determine that certain investments a StepStone Affiliated Adviser recommends for a Regulated Entity would also be appropriate investments for one or more other Regulated Entities and/or one or more Affiliated Investors as Potential Co-Investment Transactions. Such a determination may result in the Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors co-investing in certain investment opportunities. For each such investment opportunity, the Advisors to each Regulated Entity will independently analyze and evaluate the investment opportunity as to its appropriateness for such Regulated Entity taking into consideration the Regulated Entity's Objectives and Strategies.

8. Applicants state that Altegris Advisors, L.L.C. serves as the Company's investment adviser and either it or another Altegris Advisor will serve in the same capacity to any Future Regulated Entity, and that StepStone Group serves as the Company's sub-adviser and either it or another StepStone Affiliated Adviser will serve in the same capacity to any Future Regulated Entity. Applicants represent that although a StepStone Affiliated Adviser will identify and recommend

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[2] The term "Board" refers to the board of trustees of the Company and the board of directors or trustees of any other Regulated Entity.

[3] "Regulated Entity" means the Company and any Future Regulated Entity. "Future Regulated Entity" means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Altegris Advisor and (c) whose investment sub-adviser is a StepStone Affiliated Adviser. "Altegris Advisor" means Altegris Advisors, L.L.C. or any future investment adviser that (i) controls, is controlled by or is under common control with Altegris Advisors, L.L.C., (ii) is registered as an investment adviser under the Advisers Act and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity. "StepStone Affiliated Adviser" means any Existing StepStone Affiliated Adviser or any future investment adviser that (i) controls, is controlled by or is under common control with StepStone Group, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

[4] "Affiliated Investors" means the Existing Affiliated Investors and any Future Affiliated Investor. "Future Affiliated Investor" means an entity (a) whose investment adviser is a StepStone Affiliated Adviser and (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

[5] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[6] The term "Wholly-Owned Investment Subsidiary" means an entity (i) that is wholly-owned by a Regulated Entity (with such Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Entity (and, in the case of an entity that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, as amended (the "SBA Act"), as a small business investment company (an "SBIC"), to maintain a license under the SBA Act and issue debentures guaranteed by the Small Business Administration); (iii) with respect to which the Regulated Entity's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries participating in the Co-Investment Program will be Wholly-Owned Investment Subsidiaries and will have Objectives and Strategies that are either substantially the same as, or a subset of, their parent Regulated Entity's Objectives and Strategies. A subsidiary that is an SBIC may be a Wholly-Owned Investment Subsidiary if it satisfies the conditions in this definition.

investments[7] for each Regulated Entity, prior to any investment by the Regulated Entity, the StepStone Affiliated Advisers will present each proposed investment to the relevant Altegris Advisor which has the authority to approve or reject all investments proposed for the Regulated Entity by a StepStone Affiliated Adviser.

9. Applicants state that StepStone Group has an investment committee through which it will carry out its obligation under condition 1 to make a determination as to the appropriateness of a Potential Co-Investment Transaction for each Regulated Entity. Applicants represent that each StepStone Affiliated Adviser has developed a robust allocation process as part of its overall compliance policies and procedures. Applicants state that, in the case of a Potential Co-Investment Transaction, the applicable StepStone Affiliated Adviser would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a).

10. Applicants state that, once the applicable StepStone Affiliated Adviser determined a proposed allocation for a Regulated Entity, such StepStone Affiliated Adviser would notify the applicable Altegris Advisor of the Potential Co-Investment Transaction and the StepStone Affiliated Adviser's recommended allocation for such Regulated Entity. Applicants further state that the applicable Altegris Advisor would review the StepStone Affiliated Adviser's recommendation for the Regulated Entity and would have the ability to ask questions of the StepStone Affiliated Adviser and request additional information from the StepStone Affiliated Adviser. Applicants further submit that if the applicable Altegris Advisor approved the investment for the Regulated Entity, the investment and all relevant allocation information would then be presented to the Regulated Entity's Board for its approval in accordance with the conditions to the application. Applicants state that they believe the investment process that will unfold between the StepStone Affiliated Adviser and the Altegris Advisors, prior to seeking approval from the Regulated Entity's Board (which is in addition to, rather than in lieu of, the procedures required under the conditions of the application), is significant and provides for additional procedures and processes to ensure that the Regulated Entity is being treated fairly in respect of Potential Co-Investment Transactions.

11. If the Advisors to a Regulated Entity determine that a Potential Co-Investment Transaction is appropriate for the Regulated Entity (and the applicable Altegris Advisor approves the investment for such Regulated Entity), and one or more other Regulated Entities and/or one or more Affiliated Investors may also participate, the Advisors will present the investment opportunity to the Eligible Trustees[8] of the Regulated Entity prior to the actual investment by the Regulated Entity. As to any Regulated Entity, a Co-Investment Transaction will be consummated only upon approval by a required majority of the Eligible Trustees of such Regulated Entity within the meaning of section 57(o) of the Act ("Required Majority").[9]

12. With respect to the pro rata dispositions and follow-on investments provided in conditions 7 and 8, a Regulated Entity may participate in a pro rata disposition or follow-on investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Entity and Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or follow-on investment, as the case may be; and (ii) each Regulated Entity's Board has approved that Regulated Entity's participation in pro rata dispositions and follow-on investments as being in the best interests of the Regulated Entity. If the Board does not so approve, any such disposition or follow-on investment will be submitted to the Regulated Entity's Eligible Trustees. The Board of any Regulated Entity may at any time rescind, suspend or qualify its approval of pro rata dispositions and follow-on investments with the result that all dispositions and/or follow-on investments must be submitted to the Eligible Trustees.

13. No Independent Trustee of a Regulated Entity will have a financial interest in any Co-Investment Transaction.

14. Under condition 15, if an Advisor or its principals, or any person controlling, controlled by, or under common control with the Advisor or its the principals, and any Affiliated Investors (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting securities of a Regulated Entity ("Shares"), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the condition. Applicants believe that this condition will ensure that the Independent Trustees will act independently in evaluating the Co-Investment Program, because the ability of the Advisor or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly. Applicants represent that the Independent Trustees shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Entities that are registered closed-end investment companies. Similarly, with regard to BDCs, section 57(a)(4) of the Act makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC (or a company controlled by such BDC) is a joint or a joint and several participant with that person in contravention of rules as prescribed by the Commission. Because the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules under section 17(d) applicable to registered closed-end investment companies (*e.g.*, rule 17d–1) are, in the interim, deemed to apply to transactions subject to section 57(a). Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), as modified by rule 57b–1, from acting as principal, from

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[7] Applicants represent that the Altegris Advisors will not source any Potential Co-Investment Transactions under the requested Order.

[8] "Eligible Trustees" means the trustees or directors of a Regulated Entity that are eligible to vote under section 57(o) of the Act.

[9] In the case of a Regulated Entity that is a registered closed-end fund, the trustees or directors that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to section 57(o). As defined in section 57(o), "required majority" means "both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company."

participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, unless an application regarding the joint enterprise, arrangement, or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of the plan or any modification thereof, to security holders for approval, or prior to its adoption or modification if not so submitted.

2. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that the Regulated Entities, by virtue of each having an Altegris Advisor, may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act. Section 17(d) and section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively, including the sub-adviser. Thus, a StepStone Affiliated Adviser and any Affiliated Investors that it advises could be deemed to be persons related to Regulated Entities in a manner described by sections 17(d) and 57(b) and therefore prohibited by sections 17(d) and 57(a)(4) and rule 17d–1 from participating in the Co-Investment Program. Applicants further submit that, because the StepStone Affiliated Advisers are "affiliated persons" of other StepStone Affiliated Advisers, Affiliated Investors advised by any of them could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

4. Applicants state that they expect that that co-investment in portfolio investments by a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors will increase favorable investment opportunities for each Regulated Entity.

5. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain dispositions or follow-on investments, as described in the conditions), and other protective conditions set forth in the application, will ensure that each Regulated Entity will be treated fairly. Applicants state that each Regulated Entity's participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants. Applicants further state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including Altegris Advisors or the StepStone Affiliated Advisers.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time a StepStone Affiliated Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies, the Advisors to the Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. a. If the Advisors to a Regulated Entity deem participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Advisors will then determine an appropriate level of investment for such Regulated Entity.

b. If the aggregate amount recommended by the Advisors to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, pro rata based on each participant's Available Capital[10] for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Advisors to each participating Regulated Entity will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Entity's investments for compliance with these allocation procedures.

c. After making the determinations required in conditions 1 and 2(a) above, the Advisors to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Entity's shareholders; and

(B) the Regulated Entity's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided, that if another Regulated Entity or Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit a Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

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[10] "Available Capital" means (a) for each Regulated Entity, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Entity or imposed by applicable laws, rules, regulations or interpretations and (b) for each Affiliated Investor, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Investor's directors, general partners or adviser or imposed by applicable laws, rules, regulations or interpretations.

(A) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(B) the Advisors to the Regulated Entity agree to, and do, provide periodic reports to the Regulated Entity's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Advisors, any other Regulated Entity or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted under sections 17(e) and 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(C), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. Each Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Advisors will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for follow-on investments made in accordance with condition 8,[11] a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor or any affiliated person of another Regulated Entity or an Affiliated Investor is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. a. If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

b. Each Regulated Entity will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

c. A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Regulated Entity's Board has approved as being in the best interests of the Regulated Entity the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Regulated Entity's Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Advisors will provide their written recommendation as to the Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

d. Each Regulated Entity and each Affiliated Investor will bear its own expenses in connection with the disposition.

8. a. If any Regulated Entity or Affiliated Investor desires to make a "follow-on investment" (*i.e.*, an additional investment in the same entity, including through the exercise of warrants or other rights to purchase securities of the issuer) in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the Advisors will:

(i) Notify each Regulated Entity of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed follow-on investment, by each Regulated Entity.

b. A Regulated Entity may participate in such follow-on investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Advisors will provide their written recommendation as to such Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity's best interests.

c. If, with respect to any follow-on investment:

(i) The amount of a follow-on investment is not based on the Regulated Entities' and the Affiliated Investors' outstanding investments immediately preceding the follow-on investment; and

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[11] This exception applies only to follow-on investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

(ii) the aggregate amount recommended by the Advisors to be invested by the Regulated Entity in the follow-on investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

d. The acquisition of follow-on investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and be subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by a Required Majority under section 57(f).

11. No Independent Trustee of a Regulated Entity will also be a trustee, director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of any Affiliated Investor.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Advisors under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding brokers' fees contemplated by section 17(e) or 57(k) of the Act, as applicable)[12] received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Advisor pending consummation of the transaction, the fee will be deposited into an account maintained by the Advisor at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the Advisors nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(c) and (b) in the case of the Advisors, investment advisory fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

14. The Advisors to the Regulated Entities and Affiliated Investors will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisors to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within a Regulated Entity's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

15. If the Holders own in the aggregate more than 25 percent of the shares of a Regulated Entity, then the Holders will vote such shares as directed by an independent third party when voting on (1) the election of directors or trustees; (2) the removal of one or more directors or trustees; or (3) any matters requiring approval by the vote of a majority of the outstanding voting securities, as defined in section 2(a)(42) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22905 Filed 9–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78874; File No. SR–ICEEU–2016–011]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the F&O Intraday Risk Management Policy

September 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2016, ICE Clear Europe Limited ("ICE Clear Europe" or the "clearing house") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the changes is to make certain enhancements to ICE Clear Europe's F&O intraday risk management policy.

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[12] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to incorporate certain enhancements to the F&O Intraday Margin Policy. ICE Clear Europe is not making any changes to its Clearing Rules or Procedures in connection with these amendments. The amendments do not affect margining for CDS Contracts.

Currently, ICE Clear Europe makes intraday margin calls with respect to F&O Contracts where uncollateralized intraday exposure exceeds defined risk limits. ICE Clear Europe is revising its intraday F&O margin call policy to incorporate an overall clearing member limit for uncollateralized exposure, as well as the existing limits at the individual account level (*e.g.,* proprietary or customer account). Under the overall clearing member limit, an intraday F&O margin call will be triggered for a clearing member if the aggregate intraday margin shortfall across all accounts for that member exceeds one of several specified triggers (based on the member's total collateral on deposit, capital, guaranty fund contribution and original margin level). For this purpose, the intraday margin shortfall for an account for F&O Contracts will be the excess of the margin requirement (for both original and variation margin), calculated on an intraday basis, over the current amount of margin on deposit for that account in respect of F&O Contracts.

ICE Clear Europe is also revising the individual intraday account limits to address both accounts margined on a net basis using a two-day margin period of risk and accounts margined on a gross basis using a one-day margin period of risk, as well as individually segregated sponsored accounts. The revised policy specifies procedures for calculation of intraday original margin requirements for gross-margined accounts. Under the revised policy, ICE Clear Europe also retains the discretion to reduce the trigger levels applicable to individual accounts.

The revised policy also provides for intraday F&O margin calls as a result of intraday declines in the value of collateral posted as margin for F&O Contracts that exceed the relevant haircut level under ICE Clear Europe's existing Collateral and Haircut Policy.

The revised policy implements a US$ 1 million minimum threshold per account for a margin call, unless otherwise determined by the ICE Clear Europe risk department.

The revised policy clarifies certain notice procedures in connection with F&O intraday margin calls. It also includes various drafting improvements and clarifications and conforming changes.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it, and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[6] The amendments are designed to enhance the clearing house's ability to manage the risk of an intraday change in F&O margin requirements (as may result from market movements or changes in positions) or in the value of collateral previously posted to satisfy margin requirements. The amendments add a new trigger for intraday margin calls based on the aggregate F&O margin shortfall for a clearing member across all account categories. The amendments also revise the individual account triggers for intraday calls to reflect the different types of margining used for various F&O account categories by ICE Clear Europe (*e.g.,* net margining with a two-day margin period of risk or gross margining with a one-day margin period of risk). ICE Clear Europe believes that the amendments will facilitate its risk management of F&O Contracts (and related collateral). In addition, the revised policy will help ensure that the clearing house maintains sufficient margin resources to support its F&O clearing and protect the clearing house against default by an F&O Clearing Member. As such, ICE Clear Europe believes that the changes will promote the prompt and accurate clearance and settlement of securities and derivatives transactions, and further the public interest in the safe and effective clearing of such transactions. ICE Clear Europe does not believe the amendments will adversely affect the safeguarding of securities and funds in its custody or control or for which it is responsible. The changes are thus consistent with the requirements of Section 17A of the Act.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments are intended to enhance the F&O Intraday Margin Policy, and will apply to all F&O Clearing Members. As a result, ICE Clear Europe does not believe the amendments would adversely affect access to clearing by Clearing Members or their customers, adversely affect competition among Clearing Members or adversely affect the market for clearing services or limit market participants' choices for clearing transactions. Although the amendments may impose additional costs on Clearing Members, to the extent that the new intraday margin policy may require posting of intraday margin in circumstances where it would not previously have been required (or in amounts greater than previously required), ICE Clear Europe believes that such costs are warranted in light of the risk management benefits provided to the clearing house (and the clearing system generally) under the revised policy. As a result, ICE Clear Europe does not believe that the proposed amendments to the F&O Intraday Margin Policy will impose any burden on competition not appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(4)(ii)[9] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICEEU–2016–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2016–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation#rule-filings*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2016–011 and should be submitted on or before October 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–22904 Filed 9–22–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9731]

Culturally Significant Objects Imported for Exhibition Determinations: "Renaissance and Reformation: German Art in the Age of Dürer and Cranach" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Renaissance and Reformation: German Art in the Age of Dürer and Cranach," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about November 20, 2016, until on or about March 26, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 15, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–22977 Filed 9–22–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9729]

Culturally Significant Objects Imported for Exhibition Determinations: "The Shimmer of Gold: Giovanni di Paolo in Renaissance Siena" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "The Shimmer of Gold: Giovanni di Paolo in Renaissance Siena," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum at the Getty Center, Los

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(ii).

[10] 17 CFR 200.30–3(a)(12).

Angeles, California, from on or about October 11, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 19, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–22970 Filed 9–22–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9730]

Culturally Significant Objects Imported for Exhibition Determinations: "Van Gogh: Into the Undergrowth" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Van Gogh: Into the Undergrowth," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, Cincinnati, Ohio, from on or about October 15, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 14, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–22971 Filed 9–22–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2016–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board approves the fourth quarter 2016 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2016 RCAF (Unadjusted) is 0.881. The fourth quarter 2016 RCAF (Adjusted) is 0.371. The fourth quarter 2016 RCAF–5 is 0.352.

DATES: *Effective Date:* October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 19, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–22949 Filed 9–22–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36064]

Genesee & Wyoming Inc.—Acquisition of Control Exemption—Providence and Worcester Railroad Company

On September 1, 2016, Genesee & Wyoming Inc. (GWI) filed a petition under 49 U.S.C. 10502 and 49 CFR 1121 for exemption from the provisions of 49 U.S.C. 11323–11324 to allow GWI to acquire control of Providence and Worcester Railroad Company (P&W), a Class III railroad. GWI is a noncarrier holding company controlling two Class II carriers and 106 Class III carriers in the United States.

GWI states that this transaction is not eligible for the exemption at 49 CFR 1180.2(d)(2) because lines owned and operated by P&W connect with lines owned and operated by two railroads in GWI's corporate family. GWI asks for expedited consideration and requests a decision by November 15, 2016. Four railroads and one labor union [1] have filed notices of intent to participate in this proceeding.

The Board will institute an exemption proceeding pursuant to 49 U.S.C. 10502(b). A procedural schedule for comments to the petition will be set as noted below.

It is ordered:

1. An exemption proceeding is instituted under 49 U.S.C. 10502(b).

2. Replies to GWI's petition are due by October 11, 2016.

3. Notice of this decision will be published in the **Federal Register.**

4. This decision is effective on its date of service.

Decided: September 19, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–22985 Filed 9–22–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] On September 2, 2016, Norfolk Southern Railway Company, Springfield Terminal Railway Company, and Pan Am Southern LLC filed notices of intent to participate. Housatonic Railroad Company, Inc., filed a notice of intent to participate on September 8, 2016, and the Transportation Division of the International Association of the Sheet Metal, Air, Rail and Transportation Workers filed a notice of intent to participate on September 16, 2016.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 34797 (Sub-No. 1)]

New England Transrail, LLC, D/B/A Wilmington & Woburn Terminal Railway—Construction, Acquisition and Operation Exemption—in Wilmington and Woburn, Mass

By petition filed June 24, 2016,[1] New England Transrail, LLC (NET) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire 5,727 feet of existing track, construct or rehabilitate a combined 10,838 feet of track, and operate as a rail carrier over the combined 16,565 feet of track on and adjacent to a parcel of land owned by the Olin Corporation and located in Wilmington and Woburn, Mass. NET states that, upon commencement of rail operations, it would transload a variety of commodities, including, for example, paper products, steel, scrap steel, wood products, corn syrup, and biofuels at three facilities on the site.[2]

The petition for exemption raises issues that require consideration by the Board. By this decision, the Board is instituting a proceeding under 49 U.S.C. 10502(b). The issues presented by the petition will be addressed in a subsequent decision. Comments are due by November 4, 2016.

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding is instituted.

2. Comments are due by November 4, 2016.

3. Notice of the Board's action will be published in the **Federal Register**.

4. This decision is effective on its date of service.

Decided: September 20, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–22952 Filed 9–22–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] The petition for exemption in this proceeding is a resubmission of a petition for exemption previously filed in 2003 in *New England Transrail, LLC—Construction, Acquisition, & Operation Exemption—in Wilmington & Woburn, Mass.*, Docket No. FD 34391 and a petition for exemption filed in 2005 in *New England Transrail, LLC—Construction, Acquisition, & Operation Exemption—in Wilmington & Woburn, Mass.*, Docket No. FD 34797.

[2] The materials NET plans to transload are similar to those identified in NET's prior petition in Docket No. FD 34797. However, NET states that it no longer plans to "operate a municipal solid waste transfer station." (Pet. 9.)

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. *Chesapeake Appalachia, LLC, Pad ID:* Rossi, ABR–201111011.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
2. *Chesapeake Appalachia, LLC, Pad ID:* Williamson, ABR–201111019.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
3. *Chesapeake Appalachia, LLC, Pad ID:* Edger, ABR–201112020.R1, Smithfield and Ulster Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
4. *Chesapeake Appalachia, LLC, Pad ID:* RGB, ABR–201112021.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
5. *Chesapeake Appalachia, LLC, Pad ID:* Yost, ABR–201112022.R1, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
6. *Chesapeake Appalachia, LLC, Pad ID:* Wildonger, ABR–201112026.R1, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
7. *Chesapeake Appalachia, LLC, Pad ID:* Sharidan, ABR–201112027.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.
8. *Chief Oil & Gas LLC, Pad ID:* Kingsley B Drilling Pad #1, ABR–201112009.R1, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.
9. *Chief Oil & Gas LLC, Pad ID:* Kaufmann Drilling Pad #1, ABR–201201001.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.
10. *Chief Oil & Gas LLC, Pad ID:* Yoder Drilling Pad #1, ABR–201201003.R1, Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.
11. *Chief Oil & Gas LLC, Pad ID:* Bailey Drilling Pad #1, ABR–201201013.R1, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.
12. *EOG Resources, Inc., Pad ID:* FAY 1H Pad, ABR–201107019.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 13, 2016.
13. *SWN Production Company, LLC, Pad ID:* Van Order Pad, ABR–201107042.R1, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 13, 2016.
14. *Warren Marcellus, LLC, Pad ID:* Reimiller 1, ABR–201110001.R1, Meshoppen and Washington Townships, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.
15. *Warren Marcellus, LLC, Pad ID:* Mattocks 1, ABR–201110002.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.
16. *Warren Marcellus, LLC, Pad ID:* McConnell 1, ABR–201110003.R1, Tunkhannock Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.
17. *Chief Oil & Gas LLC, Pad ID:* Hemlock Hunting Club B Drilling Pad #1, ABR–201607001, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 15, 2016.
18. *Chief Oil & Gas LLC, Pad ID:* Jacobson Unit Pad, ABR–201607002, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 15, 2016.
19. *SWEPI LP, Pad ID:* Wood 626, ABR–201106006.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 20, 2016.
20. *Chief Oil & Gas LLC, Pad ID:* Lucarino Drilling Pad #1, ABR–201112010.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 20, 2016.
21. *Talisman Energy USA Inc., Pad ID:* 02 010 DCNR 587, ABR–201108002.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 20, 2016.
22. *Talisman Energy USA Inc., Pad ID:* 03 113 Vanblarcom, ABR–201108003.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.
23. *Talisman Energy USA Inc., Pad ID:* 03 111 Stephani, ABR–201108009.R1,

Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.

24. *Talisman Energy USA Inc., Pad ID:* 05 229 Acres, ABR–201108010.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.
25. *Talisman Energy USA Inc., Pad ID:* 05 164 Bennett, ABR–201107049.R1, Stevens Township, Bradford County and Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2016.
26. *Talisman Energy USA Inc., Pad ID:* 02 153 Mountain Run Hunting Club, ABR–201107050.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2016.
27. *Seneca Resources Corporation, Pad ID:* DCNR 007 Pad K, ABR–201112018.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 25, 2016.
28. *Chesapeake Appalachia, LLC, Pad ID:* Raimo, ABR–201201005.R1, Monroe and Overton Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.
29. *Chesapeake Appalachia, LLC, Pad ID:* Kathryn, ABR–201201006.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.
30. *Chesapeake Appalachia, LLC, Pad ID:* Ridenour, ABR–201201008.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.
31. *Talisman Energy USA Inc., Pad ID:* 05 008 Michnich, ABR–201108026.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.
32. *Talisman Energy USA Inc., Pad ID:* 03 074 Haralambous, ABR–201108037.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.
33. *Talisman Energy USA Inc., Pad ID:* 05 104 Rennekamp R, ABR–201108044.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.
34. *Chesapeake Appalachia, LLC, Pad ID:* Redbone, ABR–201201004.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.
35. *Chesapeake Appalachia, LLC, Pad ID:* Elwell, ABR–201201009.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.
36. *Chesapeake Appalachia, LLC, Pad ID:* Calmitch, ABR–201201029.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.
37. *Chesapeake Appalachia, LLC, Pad ID:* Manahan, ABR–201201036.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.
38. *Chesapeake Appalachia, LLC, Pad ID:* Messersmith, ABR–201201037.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.
39. *Pennsylvania General Energy Co. LLC, Pad ID:* COP Tract 356 Pad J, ABR–201201014.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 29, 2016.
40. *Chief Oil & Gas LLC, Pad ID:* Yonkin B Drilling Pad, ABR–201607003, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 29, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 19, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–22879 Filed 9–22–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent for an Environmental Impact Statement for Proposed Highway and Light Rail Improvements in the Sr 32 Corridor Between Us 50 and Ir 275 in Hamilton and Clermont Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice to rescind a Notice of Intent (NOI) for an Environmental Impact Statement (EIS).

SUMMARY: A Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** on May 9, 2012. The Ohio Department of Transportation (ODOT) is issuing this notice to advise the public that ODOT will no longer prepare a Tier 2 EIS for proposed improvements to SR 32 from US 50 in Hamilton County east to IR 275 in Clermont County, because of potential significant environmental impacts and public controversy.

FOR FURTHER INFORMATION CONTACT: Timothy M. Hill, Administrator, ODOT Office of Environmental Services, 1980 West Broad Street, Columbus, Ohio 43223 Mail Stop #4170, Telephone: (614) 644–0377, Email: *Tim.Hill@dot.ohio.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2005, a Tier 1 EIS was published in the **Federal Register** (77 FR 27272). This document evaluated transportation needs and focused on broad issues such as mode choice, general location, preliminary costs, benefits, and impacts within a study area known as the Eastern Corridor, extending from downtown Cincinnati to western Clermont County. A Tier 1 Record of Decision issued on June 2, 2006 identified feasible multi-modal components to be advanced by mode and segment into Tier 2 NEPA analyses, including a new rail transit corridor composed of four implementation segments, improved bus transit, various local network improvements, and a new highway capacity corridor composed of five implementation segments. In the interim, new information came to light regarding the archaeological resources present in connection with the Hahn Archaeological District. The discovery of this information prompted a re-evaluation of the Tier 1 ROD to determine if the decision contained there-in remained valid and if a Supplemental EIS should be prepared prior to moving into a Tier 2 EIS. On February 9, 2012 FHWA recommended advancing the project into a Tier 2 EIS as the appropriate level of study and analysis to determine the significance of impacts to archaeological sites.

Recognizing the complex interests associated with the SR 32 Relocation Project, ODOT and FHWA in 2013 engaged the U.S. Institute for Environmental Conflict Resolution (USIECR) and a facilitation team as neutral, outside entities. Their purpose was to review the project and carry out a collaborative process to help inform future decisions on the feasibility of project development continuing on this project. The study identified key stakeholder interests associated with the SR 32 Relocation Project from their interviews, including the need to: Improve transportation safety and efficiency; protect the natural environment; facilitate regional economic development; protect quality of life issues; be fiscally responsible and allocate limited dollars to the most pressing needs; safeguard historic and archeological resources; and make decisions in a reasonable timeframe. Their situation assessment presented eight options to consider in deciding whether and how to move ahead with the SR 32 Project. These ranged from not proceeding with the project at this time to proceeding as planned to fulfill NEPA, with various options in between that considered reframing/rethinking aspects of the project. In conjunction with the situation assessment process, FHWA and ODOT coordinated with nine federally-recognized tribes, state/federal resource/regulatory agencies and extensive coordination with the public and area stakeholders. Upon deliberation of the options to move forward, ODOT concluded that the original new alignment Tier 1 corridors for Segment II/III were deemed not reasonable due to their potential for significant environmental impacts and extensive public controversy.

ODOT is moving forward with the project development process to consider alternatives that have the potential for lower overall impacts, focusing on improvements to existing transportation corridors rather than new alignments through this environmentally complex area. Alignment alternatives on existing SR 32, US 50 and other roadways could include: Adding turn lanes, interchange improvements, widening to enhance capacity; minor realignments; improving signal timing and/or coordination; installing new signal(s); and other improvements. If any of these improvements require the preparation of an Environmental Impact Statement, future Notices of Intent may be filed.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by ODOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 11, 2015, and executed by FHWA and ODOT.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 6, 2016.

Robert L. Griffith,

Acting Division Administrator, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 2016–22910 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Interstate 495 (Long Island Expressway) Rest Area Upgrade Project Between Exits 51 & 52 (Eastbound) in the Town of Huntington, Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to the proposed Interstate 495 (Long Island Expressway) Rest Area Upgrade Project between Exits 51 & 52 (eastbound) in the Town of Huntington, Suffolk County, New York (NYSDOT Project Identification Number: 0229.14). Those actions rescind the Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS) dated May 21, 2007. The ROD was signed by FHWA on August 6, 2007.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before 150 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Peter Osborn, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Suite 719, Clinton Avenue and North Pearl Street, Albany, New York 12207. Telephone (518) 431–4127

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing a *Rescission of the Record of Decision* and a *Rescission of the Final Environmental Impact Statement (FEIS)* for the proposed Interstate 495 (Long Island Expressway) Rest Area Upgrade Project between Exits 51 & 52 (eastbound) in the Town of Huntington, Suffolk County, New York. The FHWA, as the lead Federal agency, in cooperation with the New York State Department of Transportation (NYSDOT) signed a ROD on August 6, 2007, for the proposed Interstate 495 (Long Island Expressway) Rest Area Upgrade Project between Exits 51 & 52 (eastbound). The proposed project evaluated alternatives for upgrading the existing rest area for cars and trucks located on I–495/LIE eastbound between Exits 51 and 52. Since the ROD was signed, NYSDOT notified FHWA that Federal funds will not be utilized during the final design and construction of the project. Therefore, FHWA has determined that the ROD and the Final Environmental Impact Statement dated May 21, 2007, will be rescinded since there will be no Federal action, and the requirements of the National Environmental Policy Act pursuant to 42 U.S.C. 4321, *et seq.* and 23 Code of Federal Regulations 771 no longer apply.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: September 12, 2016.

Peter Osborn,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 2016–22700 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0480]

Commercial Driver's License Standards: Application for Exemption; CRST Expedited

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant CRST Expedited (CRST) an exemption from the regulation that requires a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. Under the terms and conditions of this exemption, a CLP holder who has documentation of passing the CDL skills test may drive a commercial motor vehicle (CMV) for CRST without being accompanied by a CDL holder in the front seat of the vehicle. The exemption enables CLP holders to drive as part of a team and have the same regulatory flexibility as CRST team drivers with CDLs. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective from September 23, 2016 through September 24, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942–6477. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from some of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption, and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

CRST is one of the nation's largest transportation companies with a fleet of more than 4,500 CMVs. CRST seeks an exemption from 49 CFR 383.25(a)(1) that would allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, to drive a truck without a CDL holder being present in the front seat of the vehicle. CRST indicates that the CDL holder will remain in the vehicle at all times while the CLP holder is driving—just not in the front seat. This would allow a CLP holder to participate in a revenue-producing trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile in accordance with 49 CFR part 383.

CRST noted the trucking industry's need for qualified and well-trained drivers to meet increasing shipping demands. CRST believes that 49 CFR 383.25(a)(1) limits its ability to efficiently recruit, train, and employ new entrants to the industry. Prior to the implementation of section 385.25(a)(1), States routinely issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL allowed CRST time to route the new driver to his or her State of domicile to obtain the permanent CDL and place the new driver into an on-the-job training position with a driver-trainer. The driver-trainer supervised and observed the new driver, but was not required to be on duty and in the front seat at all times. Thus, the new driver became productive immediately, allowing more freight movement for CRST and compensation for the new driver.

CRST contends that compliance with the CDL rule places them in a very difficult position regarding how they return CLP holders who have passed their skills testing to their State of domicile to obtain their CDL. According to CRST, the two possible courses of action in this scenario are simple, yet costly: (1) CRST sends CLP holders to their home State by public transportation to obtain the CDL and hopes the drivers return to CRST for employment; or (2) CRST sends CLP holders back to their home State as passengers on one of its trucks. Granting the exemption would allow the CLP holder to drive as part of a team on that trip, resulting in reduced costs and increased productivity.

CRST asserts that the exemption would be consistent with the Agency's comments in the preamble to the final rule adopting § 383.25 that "FMCSA does not believe that it is safe to permit inexperienced drivers who have not passed the CDL skills test to drive unaccompanied." (76 FR 26854, 26861 May 9, 2011). The exemption sought would apply only to those CRST drivers who have passed the CDL skills test and hold a CLP. CRST believes that the exemption would result in a level of safety that is equivalent to or greater than the level of safety provided under the rule. The only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has received the actual CDL document from a State driver licensing agency.

Public Comments

On January 5, 2016, FMCSA published notice of this application and requested public comment (81 FR 291). The Agency received 56 comments. Most of the comments opposed to the CRST request were from truck drivers, driver-trainers, and other individuals. These respondents do not believe that it is safe for a CLP holder to operate a CMV without the supervision of a CDL driver-trainer in the front seat of the truck.

The Iowa Motor Truck Association (IMTA) supported the exemption request, commenting that if CLP holders are properly trained and tested, the fact that they have not yet obtained their

CDL credential would in no way compromise the safety of the operation. IMTA added that granting this exemption would enhance the productivity while maintaining the safety of CRST's operation. It would also give the applicant flexibility to allow a CLP holder who has successfully passed all CDL exams to operate more freely and in a way that benefits the driver, the carrier and the economy as a whole. According to IMTA, one of the issues with the current CLP rule is the fact that it's not always convenient to allow the CLP driver to return to their home state immediately after completing training and passing their CDL exam. The exemption would allow these drivers to join a team operation, and give CRST the time to get CLP holders through their State of domicile at a future time to complete the conversion of the CLP to a CDL. IMTA is confident in the safety and performance of CRST and believe that, if granted, these drivers would operate safely within the terms of their exemption.

Opposing the exemption were three industry groups, the Advocates for Highway and Auto Safety (Advocates), the Owner-Operator Independent Drivers Association (OOIDA), and the International Brotherhood of Teamsters (IBT).

Advocates commented that "FMCSA must reject the CRST application because it undermines existing Federal safety regulations, and will usurp the exclusive authority of states to determine who should be granted commercial driving privileges associated with the issuance of a CDL. The Application also fails to evaluate any potential safety risk to the public or address alternative means of pursuing the goal of the exemption. The Application appears to be an obvious attempt to increase company profits while ignoring the potentially significant increase in truck crash risk to the motoring public."

OOIDA believes the exemption sought by CRST is not in the interest of highway safety, will put OOIDA members who share the road with these poorly trained drivers at risk, and fails to demonstrate that an exemption would result in "a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" as set forth in 49 U.S.C. 31315(b). Further, OOIDA states that CRST does not demonstrate that it is "significantly burdened" by the existing regulation and rather only demonstrates a desire to increase productivity and preserve CRST's current business practices. OOIDA finds the request fails to meet the applicable standards the FMCSA must consider and is ill-timed, considering FMCSA is currently reviewing entry-level driver training standards.

In a similar vein, IBT commented, "It is clear from CRST's application that it is more concerned about saving money and retaining the investment that it has made in the training of the driver than making sure that the CLP holder receives the proper mentoring and supervision needed for first time CLP holders while they gather their behind-the-wheel training. Neither the DOT nor the FMCSA should entertain the relaxing of important safety standards so that motor carriers have a better opportunity to retain drivers that they have trained. The idea that a driver may not return to the company that provided his/her training has more to do with overall pay and benefits that the motor carrier may be offering in the long term than the time or distance traveled for the CLP holder to obtain a CDL from the CLP holder's home state in the short term. Neither should it be a goal of the DOT or FMCSA to 'promote greater productivity' for a motor carrier or allow CLP holders to 'actively earn a living faster.' The department's goal should be safety. Finally, the IBT feels strongly that there is no substituting the skills test for behind-the-wheel training of CLP holders by experienced CDL holders in the front seat of the CMV."

FMCSA Response and Decision

The premise of respondents opposing the exemption is that CLP holders lack experience and are safer drivers when observed by a CDL driver-trainer who is on duty and in the front seat of the vehicle. The fact is that CLP holders who have passed the CDL skills test are qualified and eligible to obtain a CDL. If these CLP holders had obtained their training and CLPs in their State of domicile, they could immediately obtain their CDL at the State driver licensing agency and begin driving a CMV without any on-board supervision. There is no data showing that having a CDL holder accompany a CLP holder who has passed the skills test improves safety. Because these drivers have passed the CDL skills test, the only thing necessary to obtain the CDL is to visit the Department of Motor Vehicles office in their State of domicile.

FMCSA has evaluated CRST's application for exemption and the public comments. The Agency believes that CRST's overall safety performance, as reflected in its "satisfactory" safety rating, will enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption is restricted to CRST's CLP holders who have documentation that they have passed the CDL skills test. The exemption will enable these drivers to operate a CMV as a team driver without requiring the accompanying CDL holder be on duty and in the front seat while the vehicle is moving.

Terms and Conditions of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 383.25(a)(1) is effective during the period of September 23, 2016 through September 24, 2018.

Extent of the Exemption

The exemption is contingent upon CRST maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any "imminent hazard" or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver's license and CLP with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

This exemption from 49 CFR 383.25(a)(1) will allow CRST drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle. The CDL holder must remain in the vehicle at all times while the CLP holder is driving—just not in the front seat.

Preemption

During the period this exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

CRST must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to *MCPSD@DOT.GOV,* and include the following information:

a. Exemption Identifier: "CRST"
b. Date of the accident,
c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
d. Driver's name and driver's license number,
e. Vehicle number and State license number,

f. Number of individuals suffering physical injury,
g. Number of fatalities,
h. The police-reported cause of the accident,
i. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
j. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the CLP-holders covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: September 12, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–22961 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0002–N–23]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks renewal of the following currently approved information collection activities. Before submitting the information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified in this notice.

DATES: Comments must be received no later than November 22, 2016.

ADDRESSES: Submit written comments on the following proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, FRA, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting that FRA acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130–0590" and should also include the title of the collection of information. Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1). FRA believes that soliciting public comment will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will be submitting for clearance by OMB as required under the PRA:

Title: Alleged Violation Reporting Form.

OMB Control Number: 2130–0590.

Abstract: The Alleged Violation Reporting Form is a response to section 307(b) of the Rail Safety Improvement Act of 2008 that requires FRA to "provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration." The Alleged Violation Reporting Form allows the general public to submit alleged violations directly to FRA. The form's goal is to allow FRA to collect information necessary to investigate the alleged violation and to follow up with the submitting party.

The Alleged Violation Reporting Form collects the name, phone number, and email address of the person submitting the alleged violation; the preferred method by which to contact the person; the railroad or company name that committed the alleged violation; the date and time the alleged violation occurred; the location the alleged violation occurred; and details about the violation. All information is voluntary. FRA will collect the information through a form on the FRA public Web site. FRA may share the information collected with FRA employees, State department of transportation partners, and law enforcement agencies.

Form Number(s): FRA F 6180.151.

Affected Public: U.S. Residents.

Respondent Universe: 1,000 individuals.

Frequency of Submission: On occasion.

Reporting Burden:

Form No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Alleged Violation Reporting Form (Form FRA F 6180.151).	1,000 American Residents.	300 forms	10 minutes	50

Total Responses: 300.

Estimated Total Annual Burden: 50 hours.

Status: Regular Review of a Currently Approved Information Collection.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless a collection displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 20, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–22995 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2016–0002–N–17]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the proposed information collection activities described below. Before submitting the proposed information collection requests (ICRs) to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities, which are identified in this notice.

DATES: Comments must be received no later than November 22, 2016.

ADDRESSES: Submit written comments on any or all of the proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130–XXXX," and should also include the title of the collection of information. Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval to implement them. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A), 5 CFR 1320.8(d)(1).

FRA believes soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a "user-friendly" format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Upon notification of work to be performed on a track a remotely controlled switch provides access to, 49 CFR 218.30 and 218.77, require remotely controlled switch operators to ensure the switches are properly lined to protect workers vulnerable to being struck by moving cars as they inspect or service rolling equipment on the track or occupy camp cars on the track. FRA believes the required notifications promote safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.77 require operators of remotely controlled switches to maintain a record of each notification requesting Blue Signal Protection for 15 days. Operators of remotely controlled switches use the information as a record documenting Blue Signal Protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Frequency of Submission: On occasion.

Respondent Universe: 763 railroads.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
218.30—Blue signal protection of workmen	70 railroads	3,600,000 notifications	1 minute	60,000
218.77—Protection of occupied camp cars	1 railroad	575 notifications	1 minute	10

Total Estimated Responses: 3,600,575.

Total Estimated Annual Burden: 60,010 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR part 215, railroads are required to inspect freight cars placed in service and take remedial action when defects are identified. Part 215 defects have a history of causing accidents or incidents by being inadvertently left in service when not properly tagged. A railroad freight car with a part 215 defect may be moved to another location for repair only after the railroad has complied with the process under 49 CFR 215.9. Section 215.9 requires railroads to affix a "bad order" tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged "bad order" so it can be readily identified and moved to another location for repair purposes only. At the repair location, the "bad order" tag serves as a notification of the defective condition of the freight car. Railroads must retain each tag for 90 days to verify proper repairs were made at the designated location. When inspecting a freight car, FRA and State inspectors review all pertinent records to determine railroads' compliance with the movement restrictions of 49 CFR 215.9.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Frequency of Submission: On occasion.

Respondent Universe: 763 railroads.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
215.9—Movement of Defective Cars for Repair—Tagging.	763 railroads	150,000 tags	5 minutes	12,500
Notifications of Removal of Defective Car Tags	763 railroads	75,000 notifications	2 minutes	2,500
215.11—Designated Inspectors—Records	763 railroads	45,000 records	1 minute	750

Total Estimated Responses: 270,000.

Total Estimated Annual Burden: 15,750 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0520.

Abstract: 49 CFR 215.301 sets forth certain requirements for the stencilling of freight cars. Section 215.301 requires railroads and private car owners to stencil or otherwise display identification marks on railroad equipment.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Frequency of Submission: On occasion.

Respondent Universe: 763 railroads.

Total Estimated Responses: 25,000 stencilled/repainted freight cars.

Total Estimated Annual Burden: 18,750 hours.

Status: Regular Review.

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Accordingly, FRA's regulations require railroads to take specific responses if there is an activation failure—when a grade crossing warning system fails to indicate the arrival of a train at least 20 seconds before the train's arrival at the crossing or to indicate the presence of a train occupying the crossing. With this information, FRA can correlate accident data and equipment malfunctions with the types and ages of equipment. FRA can then identify the causes of activation failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective.

Affected Public: Businesses.

Form Number(s): FRA F 6180.83.

Frequency of Submission: On occasion; record keeping.

Respondent Universe: 728 railroads.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.7—Telephone Notification	728 railroads	8 phone calls	15 minutes	2
234.9—Grade crossing signal system failure reports.	728 railroads	600 reports	15 minutes	150
234.105.106/107—Notification to train crew and highway traffic control authority.	728 railroads	24,000 notifications	15 minutes	6,000
234.109—Record Keeping	728 railroads	12,000 records	10 minutes	2,000

Total Estimated Responses: 36,608.

Total Estimated Annual Burden: 8,152 hours.

Status: Regular Review.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Abstract: Title 49 U.S.C. 20139 requires FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including standards for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, along with requirements for using vessels when work is performed on bridges located over bodies of water. Subpart B of 49 CFR part 214 establishes minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, 49 CFR 214.105(c) establishes standards and practices for safety net systems. Safety nets and net installations must be drop-tested at the job site after initial installation and before being used as a fall-protection system, after major repairs, and at 6-month intervals if left at one site. If a drop-test is not feasible and is not performed, then the railroad or railroad contractor, or a designated certified person, must provide written certification the net complies with the safety standards of 49 CFR 214.105. FRA and State inspectors use the information to enforce Federal regulations. The information maintained at the job site promotes safe bridge worker practices.

Under 44 U.S.C. 3507(a), and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless a collection displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 20, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–22941 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0002–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On June 3, 2016, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Comments must be submitted on or before October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On June 3, 2016, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 81 FR 35814. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the ICR and its expected burden. FRA is submitting the new request for clearance by OMB as the PRA requires.

Title: Survey of Plant and Insular Tourist Railroads Subject to FRA Bridge Safety Standards (49 CFR part 237).

OMB Control Number: 2130–New.

Abstract: FRA's *Bridge Safety Standards* (49 CFR part 237) require all owners of railroad track with a gage of 2 feet or more supported by a bridge to comply with the regulations. This includes track owners with bridges located within an industrial installation (plant) that is not part of the general railroad system of transportation (general system), but over which railroad equipment is moved by a general system railroad. To identify track owners subject to the requirements of part 237, *Bridge Safety Standards,* FRA relies on the railroad accident/incident reports that FRA regulations (49 CFR part 225, *Railroad Accidents/Incidents: Reports Classification, and Investigations*) require railroads to file monthly. However, plant railroads and insular tourist railroads are exempt from 49 CFR part 225 reporting requirements.

Under the ICR, FRA would request any railroad serving a plant and moving railroad equipment over bridges within the plant, or the plant itself, to advise FRA by email that there are railroad bridges within the installation potentially subject to FRA Bridge Safety Standards. FRA would also request insular tourist railroads, whose tracks are supported by one or more bridges, to advise FRA by email about these bridges. The email notifications should include the name of the installation or insular tourist railroad, address, including city and State, contact name, telephone number, and email address. This survey will be ongoing with initial approval requested for 3 years.

FRA desires to identify plant and insular tourist railroads that may be subject to part 237 requirements, but are exempt from part 225 reporting requirements, to analyze the risks these entities may pose to railroad bridge safety and to aid in planning bridge safety oversight activities and allocating resources.

Type of Request: Approval of a new information collection.

Affected Public: Freight railroads, industrial installations (plants), insular tourist railroads.

Form(s): N/A.

Total Estimated Annual Responses: 210.

Total Estimated Annual Burden: 53 hours.

Addressee: Send comments regarding these information collections to the

Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for DOT to properly perform its functions, including whether the information will have practical utility; the accuracy of DOT's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 20, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–22942 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2016–0002–N–21]

Agency Request for Regular Processing of Collection of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this document provides notice that FRA is submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to collect information on railroads' implementation of Positive Train Control (PTC) systems on an annual form entitled the Annual PTC Progress Report Form (Form FRA F 6180.166).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll free.) Comments or questions about any aspect of this ICR should be directed to OMB's Office of Information and Regulatory Affairs, Attn: FRA OMB Desk Officer.

SUPPLEMENTARY INFORMATION:

I. Public Participation

On June 23, 2016, FRA published a notice in the **Federal Register** seeking public comment on the revised Annual PTC Progress Report Form. 81 FR 40938 (June 23, 2016). The PRA and its implementing regulations require Federal agencies to provide 60-days' notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). The comment period closed on August 22, 2016. FRA did not receive any written comments responsive to its June 23, 2016, notice and request for comments. FRA requests regular processing and OMB authorization to collect the information on the new Annual PTC Progress Report Form (Form FRA F 6180.166), as identified below, 30 days after publication of this notice for a period of 3 years.

II. Background on the Annual PTC Reporting Requirement

Under the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), each railroad subject to 49 U.S.C. 20157(a) must submit an annual progress report to FRA by March 31, 2016, and annually thereafter, until PTC implementation is completed. 49 U.S.C. 20157(c)(1). The PTCEI Act specifically requires each railroad to provide certain information in the annual reports regarding its progress toward implementing a PTC system, including "any other information" FRA requests. *See id.* In addition, 49 U.S.C. 20157(c)(2) requires FRA to conduct compliance reviews at least annually to ensure that each railroad is complying with its revised PTC Implementation Plan (PTCIP). The PTCEI Act requires railroads to provide information to FRA that FRA determines is necessary to adequately conduct such compliance reviews. *See* 49 U.S.C. 20157(c)(2).

On March 16, 2016, OMB approved FRA's Annual PTC Progress Report Form (Form FRA F 6180.166) for a period of 180 days under its emergency processing procedures. However, based on industry's oral and written comments on the Quarterly PTC Progress Report Form (Form FRA F 6180.165, OMB Control No. 2130–0553; OMB Approval Expires June 30, 2017), FRA revised the Annual PTC Progress Report Form to be as consistent with the quarterly report form as possible (where the questions overlap), enabling railroads to transfer information from the quarterly report forms to the annual report forms more easily. In summary, on April 12, 2016, the Association of American Railroads (AAR) submitted comments to FRA on behalf of itself and its member railroads, and the American Public Transit Association (APTA) submitted comments to FRA on behalf of the Northeast Illinois Regional Commuter Railroad (Metra), the Utah Transit Authority, the Tri-County Metropolitan Transportation District of Oregon, and the Fort Worth Transportation Authority.

On April 19, 2016, FRA held a meeting on the proposed Quarterly PTC Progress Report Form to offer the affected regulated entities a forum to provide additional comments and feedback to FRA. Representatives from, and members of, AAR, APTA, the American Short Line and Regional Railroad Association, and several individual railroad representatives attended the meeting and provided feedback. FRA published minutes from the meeting on *www.regulations.gov* under Docket No. FRA–2016–0002. For a detailed summary of the oral and written comments and FRA's responses to the comments, please see 81 FR 28140 (May 9, 2016).

The current Annual PTC Progress Report Form, as approved through September 30, 2016, can be accessed and downloaded in FRA's eLibrary at: *https://www.fra.dot.gov/eLib/details/L17366.* To view the revised Annual PTC Progress Report Form, please see the form attached to FRA's June 23, 2016, **Federal Register** notice. 81 FR 40938, 40940–40953. FRA is submitting the June 23rd version of the annual form, but with minor spacing modifications, to OMB today for review and regular processing.

III. Overview of Information Collection

The associated collection of information is summarized below.

Title: Annual Positive Train Control Progress Report Form.

OMB Control Number: 2130–0553.

Form Number(s): FRA F 6180.166.

Affected Public: Businesses.

Frequency of Submission: One-time; on occasion.

Respondent Universe: 41 railroad carriers.

Reporting burden:

Annual PTC progress report	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.166	41 railroads	41 reports/forms	38.41 hours	1,575

FRA notes that the 38.41-hour estimate is an average for all railroads. FRA estimated the annual reporting burden is 60 hours for Class I and large passenger railroads, 40 hours for Class II and medium passenger railroads, and 25 hours for Class III, terminal, and small passenger railroads.

Total Estimated Annual Responses for Form FRA F 6180.166: 41.

Total Estimated Annual Burden for Form FRA F 6180.166: 1,575 hours.

Total Estimated Annual Responses for Entire Information Collection: 147,776.

Total Estimated Annual Burden for Entire Information Collection: 3,126,039.

Status: Regular Review.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on September 20, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–22943 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0090]

Request for Comment on "Federal Automated Vehicles Policy"

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and Request for Comments.

SUMMARY: NHTSA invites public comment on the document, "Federal Automated Vehicles Policy." This document is intended as a starting point that provides needed initial guidance to industry, government, and consumers. It will necessarily evolve over time, changing based on public comment; the experience of the agency, manufacturers, suppliers, consumers, and others; and/or further technological innovation. NHTSA intends to revise and refine the document within one year, and periodically thereafter, to reflect such public input, experience, and innovation, and will address significant comments received in the next revision of this document.

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than November 22, 2016.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. Frank Barickman, Team Leader at NHTSA's Vehicle Research and Test Center at (937) 666–4511 or by email at *av_info_nhtsa@dot.gov.*

For legal issues: Mr. Steve Wood of NHTSA's Office of Chief Counsel, at (202) 366–2992 or by email at *steve.wood@dot.gov.*

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA), under the U.S. Department of Transportation, was established by the Highway Safety Act of 1970, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966. NHTSA is responsible for reducing deaths, injuries, and economic losses resulting from motor vehicle crashes on our nation's roadways. This is accomplished by conducting research, setting and enforcing safety performance standards for motor vehicles and motor vehicle equipment, generating and disseminating comparative safety performance information to encourage the production and purchase of advanced safety features, requiring the calling and remedying of defective and noncompliant vehicles and equipment, and by making grants to state and local governments to enable them to conduct effective local highway safety programs. Prior or in addition to issuing standards, NHTSA also issues guidance regarding motor vehicle safety issues.

Over the past several decades, many important safety technologies have become standard equipment through regulation and voluntary industry action, and tremendous adjustments in consumer behavior about safety have been made through behavioral safety programs and the promotion of these programs by safety partners. Despite these efforts and the hundreds of thousands of lives saved attributable to these efforts, crashes still happen, and people are still injured and killed. 35,092 people died on U.S. roadways in 2015. Moreover, NHTSA's data suggest that 94% of crashes can be tied to a human choice or behavior.[1]

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[1] *See* Singh, S. (2015, February). Critical reasons for crashes investigated in the National Motor Vehicle Crash Causation Survey. (Traffic Safety Facts Crash Stats. Report No. DOT HS 812 115).

Continued

Technologies that can help drivers avoid crashes, or help vehicles themselves avoid crashes, are ushering in a new era of safety for the motoring public. As vehicle technologies take on more and more of the driving task—*i.e.,* as vehicle automation progresses, enabled by radar, camera, sensors, and communications technologies, along with highly sophisticated computer systems and software to interpret and use the data obtained by the vehicle—these innovations are expected to begin to address and mitigate that overwhelming majority of crashes due to human choices or behavior.

The term "vehicle automation" today refers to a spectrum of technologies, which can be grouped broadly into several levels. Some levels will only provide crash warnings to human drivers, or brake the vehicle automatically if the human driver fails to brake soon enough or hard enough, while higher levels will combine these abilities to create driver-assistance systems to reduce the demand of driving. At the very highest levels, the automated system itself (and not the human) may function as the "driver" of the vehicle. At each level, the safety potential grows as does the opportunity to improve mobility, reduce energy consumption and improve the livability of cities. To realize these tremendous benefits, NHTSA believes it should encourage the adoption of these technologies and support their safe introduction. At the same time, the remarkable speed with which increasingly complex technologies are evolving challenges NHTSA to use its full complement of tools to support the safe introduction of these technologies, so that they can provide the promised safety benefits today, and achieve their full safety potential in the future. To meet this challenge, NHTSA must continue to build its expertise and knowledge to keep pace with developments, expand its regulatory capability, and increase its speed of execution.

After considerable input from a wide range of stakeholders, NHTSA has developed a new document titled "Federal Automated Vehicles Policy." NHTSA is issuing this document as Agency guidance rather than in a rulemaking in order to speed the delivery of an initial regulatory framework and best practices to guide manufacturers and other entities in the safe design, development, testing, and deployment of highly automated vehicles (HAVs) and also to ensure that premature, static regulatory requirements do not hinder innovation and diffusion of the dynamic technologies that are being developed in the industry. The document is available at *www.nhtsa.gov/AV* (or at *http://www.nhtsa.gov* (search "AV Policy")), and also at *http://www.regulations.gov* (search Docket No. NHTSA–2016–0090). In the following pages, we divide the task of facilitating the safe introduction and deployment of HAVs into four sections: (1) Vehicle Performance Guidance for Highly Automated Vehicles; (2) Model State Policy; (3) NHTSA's Current Regulatory Tools; and (4) New Tools and Authorities.

Vehicle Performance Guidance for Highly Automated Vehicles

The Vehicle Performance Guidance for Highly Automated Vehicles section outlines best practices for the safe pre-deployment design, development and testing of HAVs prior to commercial sale or operation on public roads. This Guidance defines "deployment" as the operation of an HAV by members of the public who are not the employees or agents of the designer, developer, or manufacturer of that HAV.

This Guidance is intended to be an initial step to guide the safe designing, testing and deployment of HAVs. It sets DOT's expectations of industry by providing reasonable practices and procedures that manufacturers, suppliers, and other entities should follow in the immediate short term to design, test and deploy HAVs. The data generated from these activities should be shared in a way that allows government, industry, and the public to increase their learning and understanding as technology evolves but protects legitimate privacy and competitive interests.

Model State Policy

The Model State Policy confirms that States retain their traditional responsibilities for vehicle licensing and registration, traffic laws and enforcement, and motor vehicle insurance and liability regimes while outlining the Federal role for HAVs. Today, a motorist generally can drive across state lines without a worry more complicated than, "did the speed limit change?" The integration of HAVs should not change that ability. Similarly, a manufacturer should be able to focus on developing a single HAV fleet that can be sold and used in all states. State governments play an important role in facilitating HAVs, ensuring they are safely deployed, and promoting their life-saving benefits. Since 2014, DOT has partnered with the American Association of Motor Vehicle Administrators (AAMVA) to explore HAV policies. This collaboration was one of the bases for the Model State Policy framework presented here and identifies where new issues fit within the existing federal/state structure. The shared objective is to ensure the establishment of a consistent national framework that allows for different policies and approaches across States, while avoiding a patchwork of incompatible laws.

NHTSA's Current Regulatory Tools

NHTSA will continue to exercise its available regulatory authority over HAVs using its existing regulatory tools, including interpretations, exemptions, notice-and-comment rulemaking, and defects and enforcement authority. NHTSA has broad authority to identify safety defects, allowing the Agency to recall vehicles or equipment that pose an unreasonable risk to safety even when there is no applicable Federal Motor Vehicle Safety Standard (FMVSS).

To aid regulated entities and the public in understanding and using these tools (including for purposes related to the introduction of new HAVs), NHTSA has prepared a new information and guidance document, contained in Section III of the HAV Policy. This document provides instructions, practical guidance, and assistance to entities seeking to employ those tools. Furthermore, NHTSA has streamlined its review process and is committing to issuing simple HAV-related interpretations in 60 days, and ruling on simple HAV-related exemption requests in six months.

NHTSA advises interested persons that, unlike the other sections of the HAV Policy, Section III is intended to have wider application outside the automated vehicles context. Persons interested in NHTSA's general practices and procedures for interpretations, exemptions, rulemaking, and reconsideration petitions may wish to review Section III and determine whether they wish to submit comments.

New Tools and Authorities

The more effective use of NHTSA's existing regulatory tools will help to expedite the safe introduction and regulation of new HAVs. However, in part because today's governing statutes and regulations were developed when HAVs were only a remote notion, those tools alone may be insufficient to ensure that HAVs are introduced safely, and to realize the full safety promise of new technologies. The speed at which HAVs are advancing, combined with the

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Washington, DC: National Highway Traffic Safety Administration.

complexity and novelty of these innovations, will challenge the Agency's conventional regulatory processes and capabilities. This challenge requires NHTSA to examine whether the ways in which NHTSA has addressed safety for the last several decades should be expanded to realize the safety potential of HAVs over the decades to come.

Therefore, Section IV of the HAV Policy identifies potential new tools, authorities, and regulatory approaches that could aid the safe deployment of new technologies by enabling the Agency to be more nimble and flexible. There will always be an important role for standards and testing protocols based on careful scientific research and developed through the give-and-take of an open public process. However, it is likely that additional regulatory tools along with new expertise and research also will be needed to allow the Agency to more quickly address safety challenges and speed the deployment of lifesaving technology.

Public Comment

Although most of this policy is effective immediately upon publication, NHTSA is seeking public comment on the entire document. While the Agency sought input from various stakeholders during the development of the document, it recognizes that not all interested persons had a full opportunity to provide such input. Formal comments will allow for that opportunity.

Similarly, some of the items in the vehicle performance guidance are subject to the requirements of the Paperwork Reduction Act, which requires that the Agency provide separate notice and comment. The notice for those items will be published shortly at *http://www.regulations.gov* (search Docket No. NHTSA–2016–0091). Finally, NHTSA expects to hold public meetings and workshops associated with specific items in this Policy. Once the timing of those meetings has been finalized, **Federal Register** notices for those meetings will also be published.

While the Policy is intended as a starting point that provides needed initial guidance to industry, government, and consumers, it will necessarily evolve over time to meet the changing needs and demands of improved safety and technology. Accordingly, NHTSA expects and intends the policy document and its guidance to be iterative, changing based on public comment; the experience of the agency, manufacturers, suppliers, consumers, and others; and further technological innovation. NHTSA intends to revise and refine the document regularly to reflect such experience, innovation, and public input.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date. Given that we intend for the policy document to be a living document and to be developed in an iterative fashion, subsequent opportunities to comment will also be provided periodically.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material.

Authority: 49 U.S.C. 30101.

Issued in Washington, DC, on September 20, 2016 under authority delegated in 49 CFR part 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–22993 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0040]

NHTSA Enforcement Guidance Bulletin 2016–02: Safety-Related Defects and Automated Safety Technologies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final notice.

SUMMARY: Automotive technology is at a moment of rapid change and may evolve farther in the next decade than in the previous 45-plus year history of the Agency. As the automobile industry moves toward fully automated (self-driving) vehicles and other innovative mobility solutions, NHTSA seeks to facilitate the advance of automated technologies that currently present safety improvements and that, in the future, are likely to improve safety and decrease the number of crashes, traffic fatalities, and serious injuries on U.S. roadways. NHTSA is commanded by Congress to protect the safety of the driving public against unreasonable risks of harm that may occur because of

the design, construction, or performance of a motor vehicle or motor vehicle equipment, and to mitigate risks of harm, including risks that may be emerging or contingent. As NHTSA has always done when evaluating new vehicle technologies, the Agency will be guided by its statutory mission, the laws it is obligated to enforce, and the benefits of the emerging automated safety technologies appearing on U.S. roadways.

NHTSA has broad enforcement authority under existing statutes and regulations to address existing and emerging automated safety technologies. This Enforcement Guidance Bulletin sets forth NHTSA's current views on its enforcement authority—including its view that when vulnerabilities in automated safety technology or equipment pose an unreasonable risk to safety, those vulnerabilities constitute a safety-related defect—and suggests guiding principles and best practices for motor vehicle and equipment manufacturers in this context.

FOR FURTHER INFORMATION CONTACT: Justine Casselle or Elizabeth Mykytiuk, Office of the Chief Counsel, National Highway Traffic Safety Administration, at (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Legal and Policy Background
  A. NHTSA's Enforcement Authority Under the Safety Act
  B. Determining the Existence of a Defect
  C. Determining an Unreasonable Risk to Safety
III. Guidance and Recommended Best Practices: Safety-Related Defects, Unreasonable Risk, and Automated Safety Technologies

I. Executive Summary

Recent and continuing advances in automotive technology have great potential to generate significant safety benefits. Today's motor vehicles are increasingly equipped with electronics, sensors, and computing power that enable automated safety technologies, including technologies such as forward-collision warning, automatic-emergency braking, and lane-keeping assist, which have the potential to dramatically enhance safety. New technologies may not only prevent drivers from crashing, but may even do some or all of the driving for them. The potential safety implications of such technologies are vast. Importantly, as these technologies become more widespread, manufacturers must ensure their safe development and implementation.

On April 1, 2016, NHTSA published a proposed Enforcement Guidance Bulletin setting forth an overview of the Agency's enforcement authority under the Safety Act and its present views on certain enforcement subjects and issues. *See* Docket No. NHTSA–2016–0040. Recognizing the public interest in this topic and the safety concerns associated with automated safety technologies, the Agency solicited public comment before issuing a final Enforcement Guidance Bulletin. In response to the request for comment, the Agency received thirty-five (35) public submissions. Although some comments were submitted after the stated closing date of May 2, 2016, all comments submitted to the docket were considered in formulating this final Guidance.

In response to various comments suggesting that NHTSA give additional review to issues associated with certain software and cybersecurity, the Agency has decided to focus this Guidance solely on how its enforcement authority relates to automated safety technologies, including fully automated (self-driving) vehicles. Thus, comments related to cybersecurity will be addressed in future interpretations and guidance. However, this does not mean that cybersecurity is outside of NHTSA's authority. Manufacturers of motor vehicles and motor vehicle equipment must continue to follow the requirements of the Safety Act, including those related to cybersecurity.

The Agency received twenty-eight (28) comments that specifically addressed automated safety technologies from a wide variety of stakeholders and members of the public. Many commenters supported the proposed Enforcement Guidance Bulletin, noting that it adequately explained NHTSA's existing authority and how that authority extends to automated safety technologies. Some commenters opined that guidance should not be viewed as a substitute for traditional rulemaking or the establishment of performance standards. One commenter suggested that manufacturers be required to engage in constant monitoring and reporting, due to the possibility of certain systems showing no outward sign of a defect and the increased possibility of defects resulting from two systems failing to correctly interact. Another suggested replacement of NHTSA's existing enforcement model with a more flexible approach after implementing new standards. None of the alternative approaches described in this paragraph are foreclosed by this Guidance. NHTSA remains open to consideration of those and other options.

Traditionally, only after new technology is developed and proven does the Agency establish new safety standards. This approach has yielded enormous safety benefits, but one limitation of this approach is that it takes time. Strong safety regulations and standards are a vital piece of NHTSA's safety mission and the Agency will engage in rulemaking related to automated safety technologies in the future. This Guidance serves in part as a reminder that even before such rulemaking occurs, NHTSA currently has enforcement authority to address safety risks as they arise.

A number of commenters urged the Agency, when developing guidance and regulations, to not provide immunity to manufacturers for the consequences of failures of automated safety technologies simply because a manufacturer introduces them to the U.S. public. This Guidance is limited to setting forth an overview of NHTSA's enforcement authority over automated safety technologies and, therefore, is not intended to provide such legal immunity.

Other commenters suggested that while automated safety technologies may facilitate increased safety, manufacturers should ensure that over the lifespan of the vehicle such technologies themselves do not create unreasonable risks to safety due to predictable abuse or impractical recalibration requirements. The Agency agrees. Unreasonable risks due to predictable abuse or impractical recalibration requirements may constitute safety-related defects. *See United States* v. *Gen. Motors Corp.*, 518 F.2d 420, 427 (D.C. Cir. 1975) (*"Wheels"*). Manufacturers have a continuing obligation to proactively identify and mitigate such safety risks. This includes safety risks discovered after the vehicle and/or equipment has been in safe operation.

Finally, some commenters suggested that the Agency had misinterpreted its authority over certain motor vehicle equipment. Some further questioned whether software and certain devices constitute motor vehicle equipment.

NHTSA's authority over motor vehicle equipment, in its many forms, is expressed unequivocally in the Safety Act. Because some non-traditional motor vehicle equipment manufacturers may not fully recognize their responsibilities under the Safety Act, this Guidance aims to increase awareness of NHTSA's enforcement authority over motor vehicle equipment in all of its various forms.[1] This

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[1] The Agency anticipates publishing additional guidance at a later date, further clarifying the criteria the Agency considers when determining whether certain devices constitute motor vehicle equipment.

Guidance is not an attempt to alter the relationship between motor vehicle and equipment manufacturers and their suppliers, or their respective responsibilities under the Safety Act. However, manufacturers and suppliers at all levels should be aware of their respective Safety Act obligations.

NHTSA acknowledges the complexity of this evolving landscape. Nonetheless, NHTSA has been charged by Congress to protect the safety of the driving public against unreasonable risks of harm that may arise because of the design, construction, or performance of a motor vehicle or motor vehicle equipment. To fulfill that responsibility and accomplish its mission, the Agency must take steps to mitigate risks of harm, including risks that may result from automated safety technologies. This Guidance lays out a high-level overview of NHTSA's enforcement authority to evaluate and address safety risks of motor vehicle technologies. To the extent the Agency may need additional expertise to adequately evaluate such safety risks, NHTSA will take the necessary steps (as it has in the past) to meet those needs.

Based on the Agency's consideration of all comments submitted in this proceeding; to aid in the successful development and deployment of automated safety technologies; to protect the public from potential defects associated with automated safety technologies that pose an unreasonable risk to safety; and as informed by the Agency's judgment and expertise, NHTSA now publishes this Enforcement Guidance Bulletin setting forth the Agency's current view of its enforcement authority and principles guiding its exercise of that authority. This includes guiding principles and best practices for use by motor vehicle and equipment manufacturers. NHTSA is not here establishing a binding set of rules, nor is the Agency suggesting that one particular set of practices applies in all situations. The Agency recognizes that best practices may vary depending on circumstances, and manufacturers remain free to choose the solution that best fits their needs while satisfying the demands of automotive safety.

II. Legal and Policy Background

A. NHTSA's Enforcement Authority Under the Safety Act

The National Traffic and Motor Vehicle Safety Act, as amended ("Safety Act"), 49 U.S.C. 30101 *et seq.*, provides the basis and framework for NHTSA's enforcement authority over motor vehicle and motor vehicle equipment defects and noncompliances with federal motor vehicle safety standards (FMVSS). This authority includes investigations, administrative proceedings, civil penalties, and other civil enforcement actions. While fully automated (self-driving) vehicles and other automated safety technologies may modify motor vehicle and equipment design, NHTSA's statutory enforcement authority is sufficiently general and flexible to keep pace with such innovation. The Agency has the authority to respond to a safety problem posed by new technologies in the same manner it is able to respond to safety problems posed by more established automotive technology and equipment, such as carburetors, the powertrain, vehicle control systems, and forward collision warning systems—by determining the existence of a defect that poses an unreasonable risk to motor vehicle safety and ordering the manufacturer to conduct a recall. *See* 49 U.S.C. 30118(b). This enforcement authority applies notwithstanding the presence or absence of an FMVSS for any particular type of advanced equipment or technology. *See, e.g., United States* v. *Chrysler Corp.,* 158 F.3d 1350, 1351 (D.C. Cir. 1998) (NHTSA "may seek the recall of a motor vehicle either when a vehicle has 'a defect related to motor vehicle safety' or when a vehicle 'does not comply with an applicable motor vehicle safety standard.' ").[2]

Under the Safety Act, NHTSA has authority over motor vehicles, equipment included in or on a motor vehicle at the time of delivery to the first purchaser (*i.e.,* original equipment), and motor vehicle replacement equipment. *See* 49 U.S.C. 30102(a)–(b). Motor vehicle equipment is broadly defined to include "any system, part, or component of a motor vehicle as originally manufactured" and "any similar part or component manufactured or sold for replacement or improvement of a system, part, or component." 49 U.S.C. 30102(a)(7)(A)–(B). The Safety Act also gives NHTSA jurisdiction over after-market improvements, accessories, or additions to motor vehicles. *See* 49 U.S.C. 30102(a)(7)(B). All devices "manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death" are similarly subject to NHTSA's enforcement authority. 49 U.S.C. 30102(a)(7)(C).

With respect to current and emerging automated motor vehicle safety technologies, NHTSA considers such technologies (including systems and equipment) to be motor vehicle equipment, whether they are offered to the public as part of a new motor vehicle (as original equipment) or as an after-market replacement(s) of or improvement(s) to original equipment. NHTSA also considers software (including, but not necessarily limited to, the programs, instructions, code, and data used to operate computers and related devices), and after-market software updates, to be motor vehicle equipment within the meaning of the Safety Act. Software that enables devices not located in or on the motor vehicle to connect to the motor vehicle or its systems could, in some circumstances, also be considered motor vehicle equipment. Accordingly, a manufacturer of current and emerging automated safety technologies, whether it is the supplier of the equipment or the manufacturer of a motor vehicle on which the equipment is installed, has an obligation to notify NHTSA of any and all safety-related defects. *See* 49 CFR part 573. Any manufacturer or supplier that fails to do so may be subject to civil penalties. *See* 49 U.S.C. 30165(a).

NHTSA is charged with reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. *See* 49 U.S.C. 30101. Part of that mandate includes ensuring that motor vehicles and motor vehicle equipment, including automated safety technologies, perform in ways that "protect[] the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident." 49 U.S.C. 30102(a)(8). This responsibility also includes the nonoperational safety of a motor vehicle. *Id.* In pursuit of these safety objectives, and in the absence of adequate action by the manufacturer, NHTSA is authorized to determine that a motor vehicle or motor vehicle equipment is defective and that the defect poses an unreasonable risk to safety. *See* 49 U.S.C. 30118(b) and (c)(1).

B. Determining the Existence of a Defect

Under the Safety Act, a "defect" includes "any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment." 49 U.S.C. 30102(a)(2). This includes a defect in design. *See Wheels,* 518 F.2d at 436. A defect in an item of motor vehicle equipment (including hardware, software, and other electronic systems) may be considered a defect of the motor vehicle itself. *See* 49 U.S.C. 30102(b)(1)(F).

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[2] A manufacturer's obligation to recall motor vehicles and motor vehicle equipment determined to have a safety-related defect is separate and distinct from its obligation to recall motor vehicles and motor vehicle equipment that fail to comply with an applicable FMVSS. *See* 49 U.S.C. 30120.

Congress intended the Safety Act to represent a "commonsense" approach to safety and courts have followed that approach in determining what constitutes a "defect." *See, e.g., Wheels,* 518 F.2d at 436. For this reason, a defect determination does not require an engineering explanation or root cause, but instead "may be based exclusively on the performance record of the component." *Wheels,* 518 F.2d at 432 ("[A] determination of a 'defect' does not require any predicate of a finding identifying engineering, metallurgical, or manufacturing failures."). Thus, a motor vehicle or item of motor vehicle equipment contains a defect "if it is subject to a significant number of failures in normal operation, including failures either occurring during specified use or resulting from owner abuse (including inadequate maintenance) that is reasonably foreseeable (ordinary abuse)."[3] *Wheels,* 518 F.2d at 427.

A "significant number of failures" is merely a "non-de minimus" quantity; it need not be a "substantial percentage of the total." *Wheels,* 518 F.2d at 438 n.84. Whether there have been a "significant number of failures" is a fact-specific inquiry that includes considerations such as: the failure rate of the component in question; the failure rates of comparable components; the importance of the component to the safe operation of the vehicle; and the severity of harm to the vehicle and/or occupant caused by the failure. *Id.* at 427. In addition, where appropriate, the determination of the existence of a defect may depend upon the failure rate in the affected class of vehicles compared to that of other peer vehicles. *See United States* v. *Gen. Motors Corp.,* 841 F.2d 400, 412 (D.C. Cir. 1988) (*"X-Cars"*).

The Agency relies on the performance record of a vehicle or component in making a defect determination where the engineering or root cause of a failure is unknown. *See Wheels,* 518 F.2d at 432. Where, however, the engineering or root cause is known, the Agency need not proceed with analyzing the performance record. *See id.; see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 758 (D.C. Cir. 1977) (*"Carburetors"*) (finding a defect to be safety-related if it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards . . . can definitely be expected to occur in the future."). For software or other electronic systems, for example, when the engineering or root cause of the hazard is known, a defect exists regardless of whether there have been any actual performance failures.

C. Determining an Unreasonable Risk to Safety

In order to support a recall, a defect must be related to motor vehicle safety. *United States* v. *General Motors Corp.,* 561 F.2d 923, 928–29 (D.C. Cir. 1977) (*"Pitman Arms"*). In the context of the Safety Act, "motor vehicle safety" refers to an "unreasonable risk of accidents" and an "unreasonable risk of death or injury in an accident." 49 U.S.C. 30102(a)(8). Thus, while the defect analysis has generally entailed a retrospective look at how many failures have occurred (*see, e.g., Wheels* and *Pitman Arms*), the safety-relatedness question is forward-looking, and concerns hazards that may arise in the future. *See, e.g., Carburetors,* 565 F.2d at 758.

In general, for a defect to present an "unreasonable risk," there must be a likelihood that it will cause or be associated with a "non-negligible" number of crashes, injuries, or deaths in the future. *See, e.g., Carburetors,* 565 F.2d at 759. This prediction of future hazards is called a "risk analysis." *See, e.g., Pitman Arms,* 561 F.2d at 924 (Leventhal, J., dissenting) ("GM presented a 'risk analysis' which predicts the likely number of future injuries or deaths to be expected in the remaining service life of the affected models"). A forward-looking risk analysis is compelled by the purpose of the Safety Act, which "is not to protect individuals from the risks associated with defective vehicles only after serious injuries have already occurred; it is to prevent serious injuries stemming from established defects *before* they occur." *Carburetors,* 565 F.2d at 759 (emphasis added).

However, in some circumstances, a crash, injury, or death need not occur for a defect to be considered to pose an unreasonable risk. If the hazard is sufficiently serious, and at least some harm, however small, is expected to occur in the future, the risk may be deemed unreasonable. *Carburetors,* 565 F.2d at 759 ("In the context of this case . . . even an 'exceedingly small' number of injuries from this admittedly defective and clearly dangerous carburetor appears to us 'unreasonably large.'"). In other words, where a defect presents a "clearly" or "potentially dangerous" hazard, and where "at least some such hazards"—even an "exceedingly small" number—will occur in the future, that defect is necessarily safety-related. *See id.* at 754. This is so regardless of whether any injuries have already occurred, or whether the projected number of failures/injuries in the future is trending down. *See id.* at 759. Moreover, a defect may be considered "per se" safety-related if it causes the failure of a critical component; causes a vehicle fire; causes a loss of vehicle control; or suddenly moves the driver away from steering, accelerator, and brake controls—regardless of how many injuries or accidents are likely to occur in the future. *See Carburetors,* 565 F.2d 754 (engine fires); *Pitman Arms,* 561 F.2d 923 (loss of control); *United States* v. *Ford Motor Co.,* 453 F. Supp. 1240 (D.D.C. 1978) (*"Wipers"*) (loss of visibility); *United States* v. *Ford Motor Co.,* 421 F. Supp. 1239, 1243–1244 (D.D.C. 1976) (*"Seatbacks"*) (loss of control). Similarly, where a defect "is systematic and is prevalent in a particular class [of motor vehicles or equipment], . . . this is prima facie an unreasonable risk." *Pitman Arms,* 561 F.2d at 929.

III. Guidance and Recommended Best Practices: Safety-Related Defects, Unreasonable Risk, and Automated Safety Technologies

Consistent with the foregoing background, NHTSA's enforcement authority concerning safety-related defects in motor vehicles and motor vehicle equipment extends and applies equally to current and emerging automated safety technologies. This includes fully automated (self-driving) vehicles. Where a fully automated (self-driving) vehicle or other automated safety technology causes crashes or injuries, or poses other safety risks, the Agency will evaluate such technology through its investigative authority to determine whether the technology presents an unreasonable risk to safety. Similarly, should the Agency determine that a fully automated (self-driving) vehicle or other automated safety technology has manifested a safety-related defect, and a manufacturer fails to act, NHTSA will exercise its enforcement authority to the fullest extent.

To avoid violating Safety Act requirements and standards, manufacturers of current and emerging automated safety technologies are strongly encouraged to take steps to proactively identify and resolve safety concerns before their products are available for use on U.S. roadways, and to discuss such actions with NHTSA. The Agency recognizes that most automated safety technologies heavily involve electronic systems (such as hardware, software, sensors, global positioning systems (GPS) and vehicle-to-vehicle (V2V) safety communications systems). The Agency acknowledges that the increased use of electronic systems in motor vehicles and motor vehicle equipment may raise new and different safety concerns. However, the complexities of these systems do not diminish manufacturers' duties under the Safety Act. Both motor vehicle manufacturers and motor vehicle equipment manufacturers remain responsible for ensuring that their vehicles and equipment are free of safety-related defects and noncompliances, and do not otherwise pose an unreasonable risk to safety. Manufacturers are also reminded that they remain responsible for promptly reporting to NHTSA any safety-related defects or noncompliances, as well as timely notifying owners and dealers of the same.

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[3] "The protection afforded by the [Safety] Act was not limited to careful drivers who fastidiously observed speed limits and conscientiously complied with manufacturer's instructions on vehicle maintenance and operation. . . . [the statute provides] an added area of safety to an owner who is lackadaisical, who neglects regular maintenance . . ." *Wheels,* 518 F.2d at 434.

In assessing whether a motor vehicle or item of motor vehicle equipment poses an unreasonable risk to safety, NHTSA considers the vehicle component or system involved, the likelihood of the occurrence of a hazard, the potential frequency of a hazard, the severity of hazard to the vehicle and occupant, known engineering or root cause, and other relevant factors. Where a threatened hazard is substantial (*e.g.*, fire or stalling), low potential frequency may not carry as much weight in NHTSA's analysis. NHTSA may weigh the above factors, and other relevant factors, differently depending on the circumstances of the particular underlying matter at issue.

Software installed in or on a motor vehicle—which is motor vehicle equipment—presents its own unique safety risks. Because software often interacts with a motor vehicle's critical systems (*i.e.*, systems encompassing critical control functions such as braking, steering, or acceleration), the operation of those systems can be substantially altered by after-market software updates. Software located outside the motor vehicle could also be used to affect and control a motor vehicle's critical systems.[4] Under either circumstance, if software (whether or not it purports to have a safety-related purpose) creates or introduces an unreasonable safety risk to motor vehicle systems, then that safety risk constitutes a defect compelling a recall.

While the Agency acknowledges that manufacturers are not required to design motor vehicles or motor vehicle equipment that "never fail," manufacturers should consider developing systems such that should an electrical, electronic, mechanical, or software failure occur, the vehicle or equipment can still be operated in a manner to mitigate the risks from such failures. Furthermore, with the increased introduction of current and emerging automated safety technologies, manufacturers should take steps necessary to ensure that any such technology introduced to U.S. roadways accounts for the driver's ease of use and any foreseeable misuse that may occur, particularly in circumstances that require driver interaction while a vehicle is in operation. A system design or configuration that fails to take into account and safeguard against the consequences of reasonably foreseeable driver distraction or error may present an unreasonable risk to safety.

For example, an unconventional electronic gearshift assembly that lacks detents or other tactile cues that provide gear selection feedback makes it more likely that a driver may attempt to exit a vehicle with the mistaken belief that the vehicle is in park. If the vehicle's design does not guard against this foreseeable driver error by providing an effective warning or (for instance) immobilizing the vehicle when the driver's door is opened, the design may present an unreasonable risk to safety. Similarly, a semi-autonomous driving system that allows a driver to relinquish control of the vehicle while it is in operation but fails to adequately account for reasonably foreseeable situations where a distracted or inattentive driver-occupant must retake control of the vehicle at any point may also be an unreasonable risk to safety. Additionally, where a software system is expected to last the life of the vehicle, manufacturers should take care to provide secure updates as needed to keep the system functioning. Conversely, if a manufacturer fails to provide secure updates to a software system and that failure results in a safety risk, NHTSA may consider such a safety risk to be a safety-related defect compelling a recall.

Motor vehicle and motor vehicle equipment manufacturers have a continuing obligation to proactively identify safety concerns and mitigate the risks of harm. If a manufacturer discovers or is otherwise made aware of any safety-related defects, noncompliances, or other safety risks after the vehicle and/or equipment (including automated safety technology) has been in safe operation, then it should promptly contact the appropriate NHTSA personnel to determine the necessary next steps. Where a manufacturer fails to adequately address a safety concern, NHTSA, when appropriate, will address that failure through its enforcement authority.

Applicability/Legal Statement: This Enforcement Guidance Bulletin sets forth NHTSA's current views on its enforcement authority and the topic of automated safety technology, and suggests guiding principles and best practices to be utilized by motor vehicle and equipment manufacturers in this context. This Bulletin is not a final agency action and is intended as guidance only. This Bulletin does not have the force or effect of law. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the U.S. Department of Transportation, or the United States. These recommended practices do not establish any defense to any violations of the Safety Act, or regulations thereunder, or violation of any statutes or regulations that NHTSA administers. This Bulletin may be revised without notice to reflect changes in the Agency's views and analysis, or to clarify and update text.

Authority: 49 U.S.C. 30101–30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Issued: September 20, 2016.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–23010 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0091]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency may collect certain information from the public, it must receive approval from

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[4] NHTSA intends to publish an interpretation clarifying in further detail the Agency's criteria for determining whether a portable device or portable application is an "accessory" to a motor vehicle at a later date.

the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 22, 2016.

ADDRESSES: You may submit comments using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Yvonne Clarke, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone (202) 366–1845; Facsimile: (202) 366–2106; email address: *Yvonne.e.clarke@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must request public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Vehicle Performance Guidance.

Type of Request: New collection.

OMB Clearance Number: None.

Form Number: NHTSA Form 1157.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: On September 20, 2016, the Department of Transportation published the policy[1] document titled *Federal Automated Vehicles Policy.* Recognizing the potential that highly automated vehicles (HAVs) have to enhance safety and mobility, this document sets out an approach to enable the safe deployment of L2 and HAV systems. An HAV system is defined as one that corresponds to Conditional (Level 3), High (Level 4), and Full (Level 5) Automation, as defined in SAE J3016.[2] HAV systems rely on the automation system (not on a human driver) to monitor the driving environment for at least certain aspects of the driving task. An L2 system, also described in SAE J3016, is different because the human driver is never relieved of the responsibility to monitor the driving environment.

Although there is a clear technical distinction between HAV systems and lower levels of automation (L2 and below) based on whether the automated system relies on the human driver when engaged and in operation, the Guidance suggests that L2 and HAV manufacturers apply elements of this Guidance during product development, testing, and deployment. With a few exceptions detailed in the tables below, *Federal Automated Vehicles Policy* applies equally to HAV and L2 systems. NHTSA seeks comment on its burden estimates regarding HAV and L2 systems and how those burdens might differ.

The speed with which increasingly complex L2 and HAV systems are evolving challenges DOT and NHTSA to take approaches that ensure these technologies are safely introduced, provide safety benefits today, and achieve their full safety potential in the future.

Consistent with its statutory purpose to reduce traffic accidents and deaths and injuries resulting from traffic accidents,[3] NHTSA seeks to collect from, and recommend the recordkeeping and disclosure of information by vehicle manufacturers and other entities as described in *Federal Automated Vehicles Policy.* Specifically, NHTSA's recommendations in the policy section titled "Vehicle Performance Guidance for Automated Vehicles" (hereafter referred to as "Guidance") are the subject of this voluntary information collection request. This Guidance outlines recommended best practices, many of which should be commonplace in the industry, for the safe pre-deployment design, development, and testing of HAV and L2 systems prior to commercial sale or operation on public roads. Further, the Guidance identifies key areas to be addressed by manufacturers and other entities prior to testing or deploying HAV or L2 systems on public roadways.

To assist NHTSA and the public in evaluating how safety is being addressed by manufacturers and other entities developing and testing HAV and L2 systems, NHTSA is recommending the following documentation, recordkeeping, and disclosures that aid in that mission. The burden estimates contained in this notice are based on the Agency's present understanding of the HAV and L2 systems market. NHTSA seeks comment on the burden estimates in this notice in whole or in part.

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[1] Conformance to the guidance in *Federal Automated Vehicles Policy* is voluntary. *See* Fixing America's Surface Transportation Act, Public Law 114–94, 24406 (2015) ("No guidelines issued by the Secretary with respect to motor vehicle safety shall confer any rights on any person, State, or locality, nor shall operate to bind the Secretary or any person to the approach recommended in such guidelines").

[2] For more information about SAE J3016, *see http://www.sae.org/misc/pdfs/automated_driving.pdf.*

[3] 49 U.S.C. § 30101.

(1) HAV and L2 Safety Assessments

NHTSA will request that HAV and L2 manufacturers and other entities voluntarily submit "Safety Assessments" to NHTSA's Office of the Chief Counsel for each HAV system and each SAE J3016 L2 system deployed on a vehicle. NHTSA anticipates that the majority of manufacturers and other entities will submit these Assessments digitally, but seeks comment on whether some manufacturers would prefer to mail in hard copies. These Assessments are the only collections in this notice that NHTSA anticipates manufacturers will submit to the Agency regularly.[4] As explained in more detail below, NHTSA has calculated this burden to be about 760 hours per Assessment based on existing industry practices and similar information collection requests.

The Safety Assessment would summarize how the manufacturer or other entity has addressed the provisions of this Guidance at the time they intend their product to be ready for operational testing and prior to deployment. The Safety Assessment would assist NHTSA, and the public, in evaluating how safety is being addressed by manufacturers and other entities developing and testing L2 and HAV systems. The Safety Assessment would cover the following areas:

- Data Recording and Sharing
- Privacy
- System Safety
- Vehicle Cybersecurity
- Human Machine Interface
- Crashworthiness
- Consumer Education and Training
- Registration and Certification
- Post-Crash Behavior
- Federal, State and Local Laws
- Ethical Considerations
- Operational Design Domain
- Object and Event Detection and Response
- Fall Back (Minimal Risk Condition)
- Validation Methods

These areas are fully described in the Guidance section (section I) of *Federal Automated Vehicles Policy*. For each area, the Safety Assessment should include an acknowledgement that indicates one of three options:

- Meets this guidance area __________
- Does not meet this guidance area __________
- This guidance area is not applicable __________

Next to the checked line item, respondents would include the name, title, and signature of an authorized company official and the date the acknowledgement was made. Respondents would repeat this for each area covered in the Safety Assessment.

Once this collection is approved, for L2 and HAV systems already being tested and deployed, NHTSA would expect that manufacturers and other entities will provide a Safety Assessment, understanding that manufacturers and entities may wish to supplement their submissions over time. For future L2 or HAV systems, NHTSA would expect manufacturers and other entities to provide the relevant Assessment(s) to NHTSA at least four months before active public road testing begins on a new L2 or HAV system. As explained in greater detail in *Federal Automated Vehicles Policy,* "a new L2 or HAV system" is intended to include the introduction of a new capability or function, but not an incremental software and/or hardware update. For example, a vehicle might have the capability to function with no driver input in congested traffic conditions below 30 mph. If the manufacturer updates the software (or hardware) in the vehicle expanding that automated functionality to higher speed highways, the Guidance would consider that upgrade to constitute a new L2 or HAV system.

(2) Data Recording

As part of the Guidance, NHTSA suggests that manufacturers and other entities will have a documented process for testing, validation, and collection of event, incident, and crash data, for the purposes of recording the occurrence of malfunctions, degradations, or failures in a way that can be used to establish the cause of any such issues. NHTSA recommends in its Guidance that manufacturers collect data both for testing and for operational (including for event reconstruction) purposes. The Agency suggests that manufacturers and other entities retain this information for a period of five years.

For crash reconstruction purposes (including during testing), NHTSA recommends this data be stored, maintained, and readily available for retrieval by the entity itself and, if requested, by NHTSA. The Guidance recommends that manufacturers and other entities collect data associated with events involving: (1) Fatalities and personal injuries; or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power in the customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing. Vehicles should record, at a minimum, all information relevant to the event and the performance of the system, so that the circumstances of the event can be reconstructed. This data should also contain information relating to the status of the L2 or HAV system and whether the HAV system or the human driver was in control of the vehicle at the time. Manufacturers or other entities should have the technical and legal capability to share the relevant recorded information.

In addition, to assist industry and NHTSA to develop new safety metrics, the Guidance recommends that manufacturers and other entities should collect, store, and analyze data regarding positive outcomes, in addition to the type of reporting conditions listed above (event, incident, and crash data). Positive outcomes are events in which the L2 or HAV system correctly detects a safety-relevant situation, and the system successfully avoids an incident (*e.g.,* "near misses" and edge cases). Such data includes safety-related events such as near-misses between HAVs and other vehicles or road users (*e.g.,* pedestrians and bicyclists). There is value in collecting data (and making it available during full operational use) that captures events in which the automated function correctly detects and identifies an unsafe maneuver initiated by another road user (*e.g.,* another motor vehicle or pedestrian), and executes an appropriate response that successfully avoids an event, incident, or crash.

(3) Data Sharing

L2 and HAV systems have the potential to use data sharing to increase safety benefits. Thus, the Guidance recommends that each manufacturer or other entity should develop a plan for sharing its event reconstruction and other relevant data with other manufacturers and other entities. Sharing such data could help to accelerate knowledge and understanding of L2 and HAV system performance, and could be used to enhance the safety of L2 or HAV systems and to establish consumer confidence in L2 and HAV technologies. Generally, data shared with third parties should be de-identified (*i.e.,* stripped of elements that make the data directly or reasonably linkable to a specific L2 or HAV system owner or user). Manufacturers and other entities should take steps to ensure that any data shared is done in accordance with privacy and security agreements and notices applicable to the vehicle (which typically permit sharing of de-identified data) or with owner/user consent.

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[4] The other collections of information discussed in this notice are recordkeeping and/or disclosure recommendations that NHTSA might request, however, NHTSA plans on requesting information pertaining to those collections on a case-by-case basis. Examples include when information in the Safety Assessment is not clear, when testing by the Agency or other suggests conflicting information than what is contained in the Safety Assessment, etc.

(4) Consumer Education and Training

To ensure that drivers of vehicles equipped with L2 or HAV systems can safely use them as part of the day-to-day driving experience, proper education and training is imperative to ensure safe deployment and operation of automated vehicles. Therefore, the Guidance recommends that manufacturers and other entities develop, document, and maintain employee, dealer, distributor, and consumer education and training programs to address the anticipated differences in the use and operation of L2-equipped vehicles and HAVs from those of the conventional vehicles. Such programs should be designed to provide the target users with the necessary level of understanding to use these complex technologies properly, efficiently, and in the safest manner possible.

Consumer education should describe and explain topics such as an L2 or HAV system's intended use, operational parameters, system capabilities and limitations, and engagement/disengagement methods to transfer control between the driver and the L2 or HAV system. Further, consumer education should describe and explain what is meant by any displays and messaging presented by the L2 or HAV system's human-machine interface (HMI), emergency fallback scenarios in cases where the HAV system unexpectedly disengages, operational boundary responsibilities of the human driver, and potential mechanisms that could change an L2 or HAV system's behavior in service.

As part of their education and training programs, the Guidance recommends that L2 or HAV manufacturers, dealers, and distributers should consider including an on-road or on-track hands-on experience demonstrating L2 or HAV system operations and HMI functions prior to release to consumers. Other innovative approaches (*e.g.*, virtual reality) should be considered, tested, and employed as well. These programs should be continually evaluated for their effectiveness and updated on a routine basis, incorporating feedback from dealers, customers, and other data sources. NHTSA may request information on a manufacturer or other entities' consumer education to review training materials prepared by manufacturers and other entities for the purpose of evaluating effectiveness. NHTSA suggests that manufacturers and other entities retain this information for a period of five years.

(5) Certification

NHTSA anticipates that the capabilities of L2 or HAV systems on a vehicle may change such that the corresponding level of automation may change over the vehicle's lifecycle as a result of software updates. As more L2-equipped vehicles and HAVs are tested and sold commercially to be used on public roadways, older vehicles also may be modified to provide similar functionality to new vehicles. As new L2 and HAV systems are introduced to the market, manufacturers may choose to modify a vehicle's current level of automation to more advanced levels, even if the hardware was produced years previously. The Guidance recommends that manufacturers provide on-vehicle means to readily communicate concise information regarding the key capabilities of their L2 or HAV system(s) to vehicle occupants (*e.g.* semi-permanent labeling to the vehicle, in the operator's manual, or through the driver-vehicle interface).

(6) Systems Safety Practices

For the purpose of facilitating the design of L2 and HAV systems that are free of unreasonable safety risks, the Guidance recommends that manufacturers and other entities follow a robust design and validation process based on a systems-engineering approach and be fully documented. This process should encompass designing HAV systems such that the vehicle will be placed in a safe state even when there are electrical, electronic, or mechanical malfunctions or software errors.

The overall process should adopt and follow industry standards, such as those provided by the International Standards Organization (ISO) and SAE International, and collectively cover the entire design domain of the vehicle. Manufacturers and other entities should also follow guidance, best practices, and design principles available from other industries such as aviation, space, and the military (*e.g.*, the U.S. Department of Defense standard practice on system safety), to the extent they are relevant and applicable.

The process should include a hazard analysis and safety risk assessment step for the L2 or HAV system, the overall vehicle design into which it is being integrated, and when applicable, the broader transportation ecosystem. The process should describe design redundancies and safety strategies for handling cases of L2 or HAV system malfunctions.

All design decisions should be tested, validated, and verified as individual subsystems and as part of the entire vehicle architecture. The entire process should be fully documented and all actions, changes, design choices, analyses, associated testing and data should be fully traceable.

Documentation of the system safety practices is intended primarily to assist manufacturers and other entities involved in designing L2 or HAV systems in managing this complex aspect of L2 or HAV safety engineering. NHTSA may request this information in the future as well, to review system safety practices for the purpose of evaluating the robustness of manufacturers' and other entities' overall approach to designing functionally safe (fail safe) HAV systems. NHTSA suggests that manufacturers and other entities retain this information for a period of five years.

(7) Additional Data Collection Request Topics

In addition to the individually defined collection areas described above, the Guidance suggests that NHTSA may request more detailed information for matters that manufacturers and other entities already gather. Therefore, the Guidance encourages manufacturers and other entities to ensure that they retain data pertaining to these topics. They include data regarding: Vehicle cybersecurity; HMI; crashworthiness (occupant protection and compatibility); post-crash behavior; Federal, State, and local laws, operational design domain; object event detection and response; and fall back (minimal risk condition).

These additional areas are important from the standpoint of ensuring L2 and HAV systems that are free from unreasonable safety risks. In the future, this data could be used to evaluate processes for testing and validating. For these additional areas, NHTSA expects that there would be minimal additional burden placed on manufacturers and other entities because these are all areas that the Agency expects would normally be part of the design, testing, and validation process of a new L2 or HAV system. NHTSA suggests that manufacturers and other entities retain this information for a period of five years. More detailed descriptions of all of these areas can be found in *Federal Automated Vehicles Policy.*

Estimated Burden for this Collection: We estimate the following collection burden on the public. The numbers below are based on estimates that NHTSA has generated, and the agency seeks comment on the burden calculations below.

HAV and L2 Safety Assessments

There are currently 15 manufacturers that have registered with the State of California as licensed entities capable of testing automated systems. NHTSA expects that this number will increase after the publication of *Federal Automated Vehicles Policy,* potentially doubling to 30 manufacturers and other entities within six months. As automated vehicle systems continue to develop, NHTSA expects either new manufacturers or entities to enter the market, or existing manufacturers or entities to progress to a point where they are introducing HAV systems. For purposes of estimating the burden of this collection, NHTSA estimates there will be a total of 45 respondents by the end of the three years covered by this information collection request. Likewise, NHTSA estimates that a similar number of manufacturers and other entities will submit L2 Safety Assessments, although the agency notes that the 45 respondents for each assessment may not be identical, since some companies may be developing L3/L4 vehicles but not L2 vehicles, and vice versa.

The Agency expects much of the burden of submitting these Assessments to be a part of conducting good and safe engineering practices. It therefore believes that manufacturers and other entities will have access to all of the information needed to craft these Assessments already documented, and that the overall conformance burden will be the time needed to collate and review answers sourced from pre-existing documentation. The summary table below highlights the estimated burden in hours for entities seeking to submit Safety Assessments by category:

Area	Hours	HAV	L2
General Overall Summary	80	✓	✓
Data Recording and Sharing	80	✓	✓
Privacy	40	✓	✓
System Safety	20	✓	✓
Vehicle Cybersecurity	20	✓	✓
Human Machine Interface	20	✓	✓
Crashworthiness	20	✓	✓
Consumer Education and Training	40	✓	✓
Registration and Certification	40	✓	✓
Post-Crash Behavior	20	✓	✓
Federal, State and Local Laws	80	✓	✓
Ethical Consideration	80	✓	✓
Operational Design Domain	20	✓	
Object and Event Detection and Response	40	✓	
Fall Back (Minimal Risk Condition)	80	✓	
Validation methods	80	✓	✓
Total		760	620

INDUSTRY BURDEN

Safety assessments	HAV	L2
Number of Respondents	45	45
Time per Response (hours)	760	620
Frequency of Collection (for each new HAV/L2 system)	1	1
Total Estimated Annual Burden (hours)	34,200	27,900

In addition to the industry burden, because NHTSA will be collecting these Assessments, there is a government burden that will be incurred by the Agency. NHTSA expects that it will take three employees an hour each to fully process, catalogue, store each submission for a total of three burden hours. It will take an hour for a single employee to craft an acknowledgement of receipt to both the submitter and the public. The Agency also expects that 5 engineers will review these Assessments for technical completeness, spending four hours each, for a total of 20 hrs. This is expected to occur every time a Safety Assessment is received.

GOVERNMENT COST BURDEN

HAV and L2 Safety assessments	Estimate
Number of Safety Assessments	90
Time per Response (hours)	24
Frequency of Collection (for each new HAV/L2 system)	1
Total Estimated Annual Burden (hours)	2,160

Data Sharing and Recording

In conforming to this Guidance, manufacturers and other entities may see an increased burden to document their procedures. The Agency anticipates that the 45 manufacturers and other entities will have to spend an increased amount of time documenting their crash recorders, positive outcomes, event triggers/schema, data management, their data sharing plan, and data privacy. If these entities have already responded to the Safety Assessment discussed previously, the core of the information likely will already be documented. Below are estimates of the additional hourly burden NHTSA expects.

Area	Hours	HAV	L2
Crash Recorder	40	✓	✓
Positive Outcomes	40	✓	✓
Event Triggers, Schema	40	✓	✓
Data Privacy	40	✓	✓
Data Management	40	✓	✓
Data Sharing Plan	40	✓	✓
Total	240	240	240

DATA RECORDING AND SHARING FOR PURPOSES OF CRASH RECONSTRUCTION AND GENERAL KNOWLEDGE SHARING

	HAV	L2
Estimated Number of Respondents	45	45
Estimated increased documentation burden (hours)	240	240
Frequency of Collection (for each new system)	1	1
Total Estimated Annual Burden (hours)	10,800	10,800

Systems Safety Practices

As with the prior discussions, manufacturers and other entities may choose to document their system safety practices in response to the Guidance. It is anticipated that up to 45 companies may choose to document their efforts in response to the NHTSA Guidance and that they will incur corresponding costs for each new L2 or HAV system in the field. NHTSA estimates this will happen about once per year. If manufacturers and other entities have already responded to a Safety Assessment, NHTSA anticipates that the core of the information will already be documented. The following table documents the additional estimated burden.

Area	Hours	HAV	L2
Industry Standards Followed	10	✓	✓
Best Practices, Design, and Guidance Followed	10	✓	
Hazard Analysis	40	✓	✓
Safety Risk Assessment	40	✓	✓
Redundancies	20	✓	✓
Software Development, Verification, and Validation	40	✓	✓
System Testing and Traceability	40	✓	✓
Total	....	200	200

COMPANY DOCUMENTATION FOR RECOMMENDED SYSTEM SAFETY PRACTICES

	HAV	L2
Number of Respondents	45	45
Estimated increased documentation burden (hours)	200	200
Frequency of Collection	1	1
Total Estimated Annual Burden	9,000	9,000

Consumer Education and Training

As previously stated, NHTSA expects that manufacturers will develop documentation to support a claim or assertion that they are following the Guidance. NHTSA may request a subset of this documentation in some instances. However, the burden estimated here reflects additional time the manufacturers and other entities may take, outside of normal business practices, to document and store information specifically pertaining to their efforts to educate and train their customers and users.

NHTSA anticipates that up to 45 companies may choose to document their efforts as part of the NHTSA Guidance. In the table below are estimates for the burden, in hours, for the task of documenting consumer education and training efforts, over and above normal business practices. This is currently estimated to occur about once per year. If manufacturers and other entities have already responded in a Safety Assessment, NHTSA anticipates that the core of the information will already be documented, reducing the relative burden. It is also expected that some of the entities may not directly interact with consumers, in which case their burden will be lower.

Area	Hours	HAV	L2
System Intent	5	✓	✓
Operational Parameters	10	✓	✓

Area	Hours	HAV	L2
System Capabilities	10	✓	✓
Engagement/Disengagement	20	✓	✓
HMI	20	✓	✓
Fallback	20	✓	
Driver Responsibilities	10	✓	✓
Changes in system performance in Service	10	✓	✓
On-Road Hands On Training	5	✓	✓
On-Track Hands On Training	5	✓	✓
Total		115	95

Consumer Education and Training

	HAV	L2
Number of expected companies	45	45
Estimated increased documentation burden (hours)	115	95
Frequency of Collection	1	1
Total Estimated Annual Burden (hours)	5,175	4,275

Additional Areas

NHTSA anticipates that up to 45 companies may choose to document their efforts as part of the NHTSA Guidance. In the table below are estimates for the burden, in hours, for the task of documenting consumer education and training efforts, over and above normal business practices. This is currently estimated to occur about once per year. If manufacturers and other entities have already responded in a Safety Assessment, NHTSA anticipates that the core of the information will already be documented, reducing the relative burden. It is also expected that some of the entities may not directly interact with consumers, in which case their burden will be lower.

Area	Hours	HAV	L2
Vehicle Cybersecurity	60	✓	✓
Human Machine Interface	80	✓	✓
Crashworthiness	20	✓	✓
Post-crash Behavior	40	✓	✓
Federal, State, and Local Laws	20	✓	✓
Operational Design Domain	20	✓	
Object Event Detection and Response	20	✓	
Fall Back	60	✓	
Total		320	220

Additional Areas

[Cybersecurity, HMI, crashworthiness, post-crash, Fed/State/local laws, ODD, OEDR, fallback]

	HAV	L2
Number of Respondents	45	45
Estimated increased documentation burden (hours)	320	220
Frequency of Collection	1	1
Total Estimated Annual Burden (hours)	14,400	9,900

Certification

Manufacturers and other entities that produce vehicles may choose to conform to the Guidance's recommendation regarding certification, and thus may incur an additional documentation burden over and above normal documentation retention practices. Secondarily, some entities may choose to implement a physical label, thereby incurring additional costs.

Not all of the companies that respond to the Safety Assessment may produce, alter, or modify vehicles in such a way that they would need extra labeling (*e.g.* tier 1 suppliers that do not offer aftermarket upgrades), Therefore it is expected that only 30 companies could choose to implement registration and certification procedures for new L2 or HAV systems in the field. The estimated burden is expected to occur once a year. The table below documents the additional estimated burden in terms of hours

Area	Hours
Identifying Information	10
Description of L2 or HAV System	10

Area	Hours
Total	20

CERTIFICATION

	HAV	L2
Estimated Number of Respondents	30	N/A
Estimated increased documentation burden (hours)	20	N/A
Frequency of Collection	1	N/A
Total Estimated Annual Burden (hours)	600	N/A

As discussed above, some entities may choose to implement a physical label. From previous documentation for Part 567 labels,[5] the cost of the physical label to approximately $1 per label. This takes into account 3 minutes to install the label along with the actual cost of the label. For the smaller fleets of HAVs, it is expected that this number will be more expensive per vehicle. NHTSA estimates that fleets will not exceed approximately 300 vehicles during the lifespan of the current ICR, and that the cost of labeling, including cost to design, print, and affix labels to be approximately $10 per vehicle. For 30 fleets of 300 cars each, this represents a cost burden of $90,000.

	HAV	L2
Overall Estimated Burden Hours per Year	74,175	61,875
Total Estimated Burden Hours per Year	136,050	

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued on: September 20, 2016.

Nathaniel Beuse

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–23013 Filed 9–22–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2016–0026]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, October 18, 2016, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the October 18, 2016 meeting of the MDIAC at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Deputy Comptroller for Compliance Supervision, (202) 649–5688, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MDIAC will convene a meeting at 8:30 a.m. EDT on Tuesday, October 18, 2016, at the Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- *Email to: MDIAC@OCC.treas.gov*
- *Mail to:* Beverly Cole, Designated Federal Officer, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, October 11, 2016. Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Tuesday, October 11, 2016, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (202) 649–5688. Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building. Members of the public who are deaf or hard of hearing should call (202) 649–5597 (TTY) no later than 5:00 p.m. EDT on Tuesday, October 11, 2016, to arrange auxiliary aids such as sign language interpretation for this meeting.

Dated: September 19, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–22926 Filed 9–22–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 20, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

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[5] See the supporting statement titled 2127–00510_ Supporting_Statement_2014_CSv2.doc located at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201501-2127-001* (retrieved September 7, 2016)

DATES: Comments should be received on or before October 24, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0007.

Type of Review: Extension of a currently approved collection.

Title: Forest Activities Schedule.

Form: Form T.

Abstract: Form T (Timber), Forest Activities Schedule, is used to provide information on timber accounts when a sale or deemed sale under Internal Revenue Code sections 631(a), 631(b), or other exchange has occurred during the tax year.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 446,208.

OMB Control Number: 1545–1379.

Type of Review: Extension of a currently approved collection.

Form: 8831.

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

Abstract: Form 8831 is used to report and pay excise tax on any transfer of a residual interest in a Real Estate Mortgage Investment Conduit to a disqualified organization, the amount due if the tax is waived, or the excise tax due on pass-through entities with interests held by disqualified organizations.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 237.

OMB Control Number: 1545–1566.

Type of Review: Extension of a currently approved collection.

Title: Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction; Notice 2010–46, Prevention of Over-Withholding of U.S. Tax Avoidance with Respect to Certain Substitute Dividend Payments.

Abstract: The collections of information in Notice 97–66 are required to qualify substitute interest payments as portfolio interest and to defer, on election by the taxpayer, the effective date of the notice and the final securities lending regulations (T.D. 8735, 62 FR 53498) for substitute payments made after December 31, 1997. The collection of information in Notice 2010–46 is required to prevent excessive taxation under § 871(l) during the transition period.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 62,750.

OMB Control Number: 1545–1870.

Type of Review: Extension of a currently approved collection.

Title: TD 9107—Guidance Regarding Deduction and Capitalization of Expenditures.

Abstract: The collection of information in this Treasury Decision is in § 1.263(a)-5(f). This information is required to verify the proper allocation of certain amounts paid in the process of investigating or otherwise pursuing certain transactions involving the acquisition of a trade or business. The collection of information is voluntary but required to obtain a benefit.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 3,000.

OMB Control Number: 1545–1871.

Type of Review: Extension of a currently approved collection.

Title: TD 9165: Regulations Governing Practice Before the Internal Revenue Service.

Abstract: The collections of information (disclosure requirements) in these final regulations are in Code of Federal Regulations § 10.35(e). Section 10.35(e) requires a practitioner providing a covered opinion to make certain disclosures in the beginning of marketed opinions, limited scope opinions and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make one or more disclosures. The collection of this material helps to ensure that taxpayers who receive a tax shelter opinion are informed of any facts or circumstances that might limit the use of the opinion.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 13,333.

OMB Control Number: 1545–2030.

Type of Review: Extension of a currently approved collection.

Title: REG–120509–06 (TD 9465 -Final), Determination of Interest Expense Deduction of Foreign Corporations.

Abstract: Treasury Decision (TD) 9465 contains final regulations under section 882(c) of the Internal Revenue Code (Code) concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. The collection of information in these final regulations is in § 1.884–1(e)(3)(iv). This information is required by the IRS to allow a taxpayer to reduce U.S. liabilities to the extent necessary to prevent the recognition of a dividend equivalent amount.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 35.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–22994 Filed 9–22–16; 8:45 am]

BILLING CODE 4830–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Agency Information Collection (Acquisition Regulation (VAAR) Clause 852.211–73, Brand Name or Equal) Under OMB Review; Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0585" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0585."

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–73, Brand Name or Equal.

OMB Control Number: 2900–0585.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR clause 852.211–73 advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day period soliciting comments on this collection of information was published at 81 FR 47859 on July 22, 2016.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,750.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy & Records Management, Department of Veterans Affairs.

[FR Doc. 2016–22912 Filed 9–22–16; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Energy Conservation Standards for Residential Furnaces; Proposed Rules

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2014–BT–STD–0031]

RIN 1904–AD20

Energy Conservation Program: Energy Conservation Standards for Residential Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking (SNOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential furnaces. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. On March 12, 2015, DOE published in the **Federal Register** a notice of proposed rulemaking (NOPR), in which DOE proposed amendments to the energy conservation standards for residential non-weatherized gas furnaces and mobile home gas furnaces. In response to the NOPR, DOE received comment expressing concern regarding DOE's proposed approach and encouraging the Department to examine establishing a separate product class for small furnaces. In response, DOE published a notice of data availability (NODA) in the **Federal Register** on September 14, 2015 that contained an analysis of a potential product class for small non-weatherized gas furnaces. In this supplemental notice of rulemaking (SNOPR), DOE responds to comments received on the NOPR and NODA and is making a modified proposal regarding amended energy conservation standards for the subject residential furnaces (including a separate small furnaces product class), which supersedes DOE's earlier proposal, as set forth in the March 12, 2015 NOPR. The notice also requests comment on the SNOPR's proposed standards and associated analyses and results. The SNOPR also proposes clarifications to the certification and reporting requirements of standby mode and off mode values for non-weatherized oil furnaces (including mobile home oil furnaces) and electric furnaces, to provide direction on the rounding of standby mode and off mode values, generally, and to clarify the level of precision for the furnace and boiler standards.

DATES: *Comments:* DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking before and after the public meeting, but no later than November 22, 2016. See section VII, "Public Participation," for details.

Comments regarding the likely competitive impact of the proposed standards should be sent to the Department of Justice contact listed in the **ADDRESSES** section before November 22, 2016.

Meeting: DOE will hold a public meeting on October 17, 2016, from 9:00 a.m. to 5:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue SW, Washington, DC 20585.

Instructions: Any comments submitted must identify the SNOPR on Energy Conservation Standards for Residential Furnaces, and provide docket number EERE–2014–BT–STD–0031 and/or regulatory information number (RIN) 1904–AD20. Comments may be submitted using any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

Email: ResFurnaces2014STD0031@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Postal Mail: Mr. John Cymbalsky, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Mr. John Cymbalsky, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Room 6002, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document ("Public Participation").

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before November 22, 2016. Please indicate in the "Subject" line of your email the title and Docket Number of this rulemaking notice.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0031.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, "Public Participation," for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Appliance and Equipment Standards Staff at (202) 586–6636 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

Title III, Part B[1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include non-weatherized gas furnaces (NWGFs) and mobile home gas furnaces (MHGFs), the subject of this rulemaking. (42 U.S.C. 6292(a)(5))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA specifically provides that DOE must conduct a second round of energy conservation standards rulemaking for NWGFs and MHGFs. (42 U.S.C. 6295(f)(4)(C)) The statute also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Once complete, this rulemaking will satisfy both statutory provisions.

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for the subject residential furnaces (*i.e.*, NWGFs and MHGFs). The proposed standards, which are expressed in terms of minimum annual fuel utilization efficiency (AFUE) by certified input capacity and electrical energy consumption, are shown in Table I.1 and Table I.2. These proposed standards, if adopted, would apply to all NWGFs and MHGFs listed in Table I.1 and Table I.2 manufactured in, or imported into, the United States starting on the date 5 years after the publication of the final rule for this rulemaking. For non-weatherized gas furnaces, DOE has also suggested an alternative certified input capcity threshold of 60 kBtu/h for the proposed standard of 80 percent AFUE, and requests public comment on this alternative. Increasing the small furnace threshold reduces the fuel switching impacts relative to the proposed standard (see Table V.3), and has a significantly lower fraction of consumers who would be negatively impacted (see Table V.41). See Section V.C.1 for more discussion on this alternative.

TABLE I.1—PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 6]

Product class	Certified input capacity (kBtu/h)	Proposed standard: AFUE (%)
Non-Weatherized Gas Furnaces	≤55	80.0
	>55	92.0
Mobile Home Gas Furnaces	All	92.0

TABLE I.2—PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES ELECTRICAL ENERGY CONSUMPTION

[TSL 3]

Product class	Proposed standby mode standard: $P_{W,SB}$ (watts)	Proposed off mode standard: $P_{W,OFF}$ (watts)
Non-Weatherized Gas Furnaces	8.5	8.5
Mobile Home Gas Furnaces	8.5	8.5

A. Benefits and Costs to Consumers

Table I.3 and Table I.4 present DOE's evaluation of the economic impacts of the proposed AFUE standards and standby mode and off mode standards, respectively, on consumers of NWGFs and MHGFs, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] In both cases, the average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of NWGFs and MHGFs, which is estimated to be 21.5 years (see section IV.F.6).

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[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

TABLE I.3—IMPACTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS ON CONSUMERS OF NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 6]

Product class	Average LCC savings (2015$)	Simple payback period (years)
Non-Weatherized Gas Furnaces	692	6.1
Mobile Home Gas Furnaces	1,049	1.7

TABLE I.4—IMPACTS OF PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS ON CONSUMERS OF NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 3]

Product class	Average LCC savings (2015$)	Simple payback period (years)
Non-Weatherized Gas Furnaces	19	7.0
Mobile Home Gas Furnaces	19	6.9

Estimates of the combined impact of the proposed AFUE and standby mode and off mode standards on consumers are shown in Table I.5.

TABLE I.5—COMBINED IMPACTS OF PROPOSED AFUE AND STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS ON CONSUMERS OF NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

Product class	Average LCC savings (2015$)	Simple payback period (years)
Non-Weatherized Gas Furnaces	411	7.0
Mobile Home Gas Furnaces	1,050	1.9

DOE's analysis of the impacts of the proposed standards on consumers is described in further detail in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of industry discounted cash flows from the reference year of the manufacturer impact analysis (MIA) through the end of the analysis period (2016 to 2051). Using a real discount rate of 6.4 percent, DOE estimates that the INPV for manufacturers of NWGFs and MHGFs in the case without amended standards is $1,104.3 million in 2015$. DOE analyzed the impacts of AFUE energy conservation standards and standby mode and off mode energy conservation standards on manufacturers independently. Under the proposed AFUE standards, DOE expects the impacts on INPV to range from −8.0 percent to 3.5 percent, or a change of −$88.0 million to $38.5 million. Under the proposed standby mode and off mode standards, DOE expects impacts on INPV to range from −0.3 percent to 0.5 percent, or a change of −$3.4 million to $5.7 million. Industry conversion costs are expected to total $54.7 million as a result of the proposed standards.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in further detail in section IV.J of this document.

C. National Benefits and Costs[4]

Benefits and costs for the AFUE standards are considered separately from benefits and costs for the standby mode and off mode standards because it was not feasible to develop a single, integrated standard. As discussed in the October 20, 2010 test procedure final rule, DOE concluded that due to the magnitude of the active mode energy consumption as compared to the standby mode and off mode electrical consumption, an integrated metric would not be feasible because the standby and off mode electrical consumption would be a *de minimis* portion of the overall energy consumption. 75 FR 64621, 64627. Thus, an integrated metric could not be used to effectively regulate the standby mode and off mode energy consumption.

1. AFUE Standards

DOE's analyses indicate that the proposed AFUE energy conservation standards for NWGFs and MHGFs would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for NWGFs and MHGFs purchased in the 30-year period that begins in the anticipated first year of compliance with the amended standards (2022–2051) amount to 2.9 quadrillion British thermal units (Btu), or quads.[5] This represents a savings of 2.3 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

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[3] The average LCC savings are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of amended or new standards (see section IV.F.8). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C.1.a). The AFUE standard results include the projected fuel switching as described in chapter 8 of the SNOPR TSD.

[4] All monetary values in this document are expressed in 2015 dollars and, where appropriate, are discounted to 2016 unless explicitly stated otherwise.

The cumulative net present value (NPV) of total consumer benefits of the proposed AFUE standards for NWGFs and MHGFs ranges from $5.6 billion (at a 7-percent discount rate) to $21.7 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product and installation costs for NWGFs and MHGFs purchased in 2022–2051.

In addition, the proposed AFUE standards for NWGFs and MHGFs are projected to yield significant environmental benefits. DOE estimates that the proposed AFUE standards would result in cumulative emission reductions (over the same period as for energy savings) of 143 million metric tons (Mt)[6] of carbon dioxide (CO_2), 687 thousand tons of nitrogen oxides (NO_X), and 2,777 thousand tons of methane (CH_4).[7] Projected emissions show an increase of 76.8 thousand tons of sulfur dioxide (SO_2), 1.07 thousand tons of nitrous oxide (N_2O), and 0.3 tons of mercury (Hg). The increase is due to projected switching from NWGFs to electric heat pumps and electric furnaces under the proposed standards. Note that the reduction in carbon emissions would be diminished by 18 percent if DOE were to utilize an alternate threshold for small furnaces of less than or equal to 60 kBTU/hr to set its proposed standard of 80 percent AFUE. See Section V.C.1 for more analysis. The cumulative reduction in CO_2 emissions through 2030 amounts to 6.44 Mt, which is equivalent to the emissions resulting from the annual electricity use of 0.88 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton (t) of CO_2 (otherwise known as the ''Social Cost of Carbon,'' or SCC) developed by a Federal interagency working group.[8] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I.6), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.8 billion and $12.6 billion, with a value of $4.12 billion using the central SCC case represented by $40.6/t in 2015.

DOE estimates the present monetary value of the NO_X emissions reduction to be $0.2 billion at a 7-percent discount rate and $0.5 billion at a 3-percent discount rate.[9] DOE is still investigating appropriate valuation of changes in methane and other emissions, and therefore did not include any such values in the analysis for this SNOPR. However, the available evidence indicates that the value of the reduction in methane emissions from the proposed standards would far outweigh the cost associated with the relatively small increase in SO_2, N_2O, and Hg emissions. Consideration of those values would not affect the standards DOE proposes in this SNOPR.

Table I.6 summarizes the economic benefits and costs expected to result from the proposed AFUE standards for NWGFs and MHGFs.

TABLE I.6—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 6]*

Category	Present value (billion 2015$)	Discount rate (percent)
Benefits		
Consumer Operating Cost Savings	10.1	7
	30.2	3
CO_2 Reduction (using mean SCC at 5% discount rate)**	0.8	5
CO_2 Reduction (using mean SCC at 3% discount rate)**	4.1	3
CO_2 Reduction (using mean SCC at 2.5% discount rate)**	6.7	2.5
CO_2 Reduction (using 95th percentile SCC at 3% discount rate)**	12.6	3
NO_X Reduction †	0.2	7
	0.5	3
Total Benefits †	14.3	7
	34.8	3

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[5] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1. A quad is equal to 10^{15} Btu.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which includes key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014. At the time when the SNOPR was prepared, *AEO 2015* was the most recent available *AEO*. DOE intends to use *AEO 2016* for the final rule.

[8] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[9] DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis*. See section IV.L.2 for further discussion. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.*, Order in Pending Case, 577 U.S. __ __ (2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011), the values would be nearly two-and-a-half times larger.

TABLE I.6—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES—Continued

[TSL 6] *

Category	Present value (billion 2015$)	Discount rate (percent)
Costs		
Consumer Incremental Installed Costs	4.4	7
	8.5	3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value †	9.9	7
	26.3	3

* This table presents the costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051. The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standards, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5 percent, 3 percent, and 2.5 percent. For example, for 2015 emissions, these values are $12.4/t, $40.6/t, and $63.2/t, in 2015$, respectively. The fourth set ($118/t in 2015$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011), the values would be nearly two-and-a-half times larger.

† Total Benefits for both the 3 percent and 7 percent cases are presented using only the average SCC with 3-percent discount rate ($40.6/t in 2015).

The benefits and costs of the proposed AFUE standards, for NWGFs and MHGFs sold in 2022–2051, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are: (1) The value of the benefits in reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[10]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products. The national operating cost savings are measured for the lifetime of NWGFs and MHGFs shipped in 2022–2051 and include savings that accrue from such products after 2051. The benefits associated with reduced carbon emissions achieved as a result of the proposed standards are also calculated based on the lifetime of NWGFs and MHGFs shipped in 2022–2051. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values for emissions in future years reflect CO_2-emissions impacts that continue through 2300. In addition, the CO_2 reduction is a benefit that accrues globally. As discussed in section IV.L.1, DOE maintains that consideration of global benefits is appropriate because of the global nature of the climate change problem.

Estimates of annualized benefits and costs of the proposed AFUE standards are shown in Table I.7. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.6/metric ton in 2015),[11] the estimated cost of the NWGFs and MHGFs standards proposed in this rule is $500 million per year in increased equipment costs, while the estimated annual benefits are $1,138 million in reduced equipment operating costs, $243 million in CO_2 reductions, and $18.6 million in reduced NO_X emissions. In this case, the net benefit amounts to $900 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.6/t in 2015, the estimated cost of the proposed NWGFs and MHGFs AFUE standards is $504 million per year in increased equipment costs, while the estimated annual benefits are $1,785 million in reduced operating costs, $243 million in CO_2 reductions, and $29.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $1,553 million per year.

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[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2016, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2016. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.6. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[11] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

TABLE I–7—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 6] *

	Discount rate	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
		(million 2015$/year)		
Benefits				
Consumer Operating Cost Savings	7%	1,138	1,007	1,353.
	3%	1,785	1,548	2,156.
CO_2 Reduction (using mean SCC at 5% discount rate) **	5%	69.7	62.2	80.8.
CO_2 Reduction (using mean SCC at 3% discount rate) **	3%	243	217	283.
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5%	360	320	418.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3%	742	661	862.
NO_X Reduction †	7%	18.6	16.8	47.9.
	3%	29.3	26.3	76.8.
Total Benefits †	7% plus CO_2 range	1,226 to 1,899	1,086 to 1,684	1,482 to 2,263.
	7%	1,400	1,240	1,684.
	3% plus CO_2 range	1,884 to 2,557	1,636 to 2,235	2,315 to 3,096.
	3%	2,058	1,791	2,517.
Costs				
Consumer Incremental Product Costs	7%	500	554	452.
	3%	504	559	460.
Net Benefits				
Total †	7% plus CO_2 range	726 to 1,399	531 to 1,130	1,030 to 1,811.
	7%	900	686	1,232.
	3% plus CO_2 range	1,380 to 2,052	1,077 to 1,676	1,855 to 2,637.
	3%	1,553	1,232	2,057.

* This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022 – 2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022 – 2051.The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standards, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a constant price trend in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.L.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using four different sets of SCC values. The first three use the average SCC calculated using 5 percent, 3 percent, and 2.5 percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2. for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

† Total Benefits for both the 3 percent and 7 percent cases are presented using only the average SCC with 3-percent discount rate. In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

2. Standby Mode and Off Mode Standards

For the proposed standby mode and off mode standards, relative to the case without new standards, the lifetime energy savings for NWGFs and MHGFs purchased in the 30-year period that begins in the anticipated first year of compliance with the new standards (2022–2051) amount to 0.28 quads.[12] This represents a savings of 16 percent relative to the energy use of these products in standby mode and off mode in the case without new standards (referred to as the "no-new-standards case").

The cumulative net present value (NPV) of total consumer benefits of the proposed standby mode and off mode standards for NWGFs and MHGFs ranges from $1.31 billion (at a 7-percent discount rate) to $3.96 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for NWGFs and MHGFs purchased in 2022–2051.

In addition, the proposed standby mode and off mode standards for NWGFs and MHGFs are projected to yield significant environmental benefits. DOE estimates that the proposed standby mode and off mode standards would result in cumulative emission reductions (over the same period as for energy savings) of 16.3 Mt of CO_2, 9.17 thousand tons of SO_2, 30.0 thousand tons of NO_X, 72.3 thousand tons of CH_4, 0.192 thousand tons of N_2O, and 0.034 tons of Hg. The cumulative reduction in

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[12] The quantity refers to full-fuel-cycle (FFC) energy savings.

CO_2 emissions through 2030 amounts to 1.23 Mt, which is equivalent to the emissions resulting from the annual electricity use of 0.169 million homes.

Using discount rates appropriate for each set of SCC values (see Table I.6), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2-equivalent emissions of other gases with global warming potential) is between \$0.098 billion and \$1.454 billion, with a value of \$0.477 billion using the central SCC case represented by \$40.6/t in 2015. DOE also estimates the present monetary value of the NO_X emissions reduction to be \$0.02 billion at a 7-percent discount rate and \$0.05 billion at a 3-percent discount rate.

Table I.8 summarizes the economic benefits and costs expected to result from the proposed standby mode and off mode standards for NWGFs and MHGFs.

TABLE I.8—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR NWGFS AND MHGFS

[TSL 3] *

Category	Present value (billion 2015$)	Discount rate (percent)
Benefits		
Consumer Operating Cost Savings	1.7	7
	4.7	3
CO_2 Reduction (using mean SCC at 5% discount rate) **	0.1	5
CO_2 Reduction (using mean SCC at 3% discount rate) **	0.5	3
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	0.8	2.5
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **	1.5	3
NO_X Reduction †	0.02	7
	0.05	3
Total Benefits †	2.2	7
	5.2	3
Costs		
Consumer Incremental Installed Costs	0.4	7
	0.7	3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value †	1.8	7
	4.5	3

* This table presents the costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051. The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standards, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5 percent, 3 percent, and 2.5 percent. For example, for 2015 emissions, these values are \$12.4/t, \$40.6/t, and \$63.2/t, in 2015\$, respectively. The fourth set (\$118/t in 2015\$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the "Regulatory Impact Analysis for the Clean Power Plan Final Rule," published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011), the values would be nearly two-and-a-half times larger.

† Total Benefits for both the 3 percent and 7 percent cases are presented using only the average SCC with 3-percent discount rate.

The benefits and costs of the proposed standby mode and off mode standards, for NWGFs and MHGFs sold in 2022–2051, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are: (1) The national economic value of the benefits in reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[13]

Estimates of annualized benefits and costs of the proposed standby mode and off mode standards are shown in Table I.9. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of \$40.6/metric ton in 2015), the estimated cost of the NWGFs and MHGFs standards proposed in this rule is \$40.7 million per year in increased equipment costs, while the estimated annual benefits are \$188 million in reduced equipment operating costs, \$28.2 million in CO_2 reductions, and \$1.79 million in reduced NO_X emissions. In this case, the net benefit amounts to \$178 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.6/metric ton in 2015, the estimated cost of the proposed NWGFs and MHGFs standby mode and off mode standards is $41.4 million per year in increased equipment costs, while the estimated annual benefits are $276 million in reduced operating costs, $28.2 million in CO_2 reductions, and $2.77 million in reduced NO_X emissions. In this case, the net benefit amounts to $265 million per year.

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[13] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2016, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2016. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.8. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.9—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

[TSL 3] *

	Discount rate	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
		(million 2015$/year)		
Benefits				
Consumer Operating Cost Savings	7%	188	169	219
	3%	276	246	329
CO_2 Reduction (using mean SCC at 5% discount rate) **	5%	8.2	7.4	9.2
CO_2 Reduction (using mean SCC at 3% discount rate) **	3%	28.2	25.5	31.8
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5%	41.6	37.6	46.9
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3%	86.0	77.8	96.9
NO_X Reduction †	7%	1.8	1.6	4.5
	3%	2.8	2.5	7.1
Total Benefits †	7% plus CO_2 range	198 to 276	178 to 249	233 to 321
	7%	218	197	255
	3% plus CO_2 range	287 to 365	256 to 326	345 to 433
	3%	307	274	368
Costs				
Consumer Incremental Product Costs	7%	40.7	37.2	45.4
	3%	41.4	37.5	46.5
Net Benefits				
Total †	7% plus CO_2 range	157 to 235	141 to 212	187 to 275
	7%	178	159	210
	3% plus CO_2 range	245 to 323	218 to 288	298 to 386
	3%	265	236	321

* This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051.The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standards, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a constant price trend for each of the estimates. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using 4 different sets of SCC values. The first three use the average SCC calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.,* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.,* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with 3-percent discount rate. In the rows labeled "7 percent plus CO_2 range" and "3 percent plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

3. Combined Results for AFUE Standards and Standby Mode and Off Mode Standards

DOE also added the annualized benefits and costs from the individual annualized tables to provide a combined benefit and cost estimate of the proposed AFUE and standby mode and off mode standards, as shown in Table I.10.[14] The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.6/metric ton in 2015), the estimated cost of the NWGF and MHGF standards proposed in this rule is $541 million per year in increased equipment costs, while the estimated annual benefits are $1,326 million in reduced equipment operating costs, $272 million in CO_2 reductions, and $20 million in reduced NO_X emissions. In this case, the net benefit amounts to $1,077 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.6/metric ton in 2015, the estimated cost of the proposed NWGF and MHGF standards is $546 million per year in increased equipment costs, while the estimated annual benefits are $2,061 million in reduced operating costs, $272 million in CO_2 reductions, and $32 million in reduced NO_X emissions. In this case, the net benefit amounts to $1,819 million per year.

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[14] To obtain the combined results, DOE added the results for the AFUE standards in Table I.7 with the results for the standby mode and off mode standards in Table I.9.

TABLE I.10—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE (TSL 6) AND STANDBY MODE AND OFF MODE (TSL 3) ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES *

	Discount rate	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
		(million 2015$/year)		
Benefits				
Consumer Operating Cost Savings	7%	1326	1176	1572
	3%	2061	1794	2486
CO_2 Reduction (using mean SCC at 5% discount rate) **	5%	78	70	90
CO_2 Reduction (using mean SCC at 3% discount rate) **	3%	272	242	315
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5%	401	358	465
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3%	828	739	959
NO_X Reduction †	7%	20	18	52
	3%	32	29	84
Total Benefits †	7% plus CO_2 range	1424 to 2175	1264 to 1933	1715 to 2584
	7%	1618	1437	1939
	3% plus CO_2 range	2171 to 2921	1892 to 2561	2660 to 3529
	3%	2364	2065	2884
Costs				
Consumer Incremental Product Costs	7%	541	592	497
	3%	546	597	506
Net Benefits				
Total †	7% plus CO_2 range	884 to 1634	673 to 1342	1217 to 2086
	7%	1077	845	1442
	3% plus CO_2 range	1625 to 2375	1295 to 1964	2154 to 3023
	3%	1819	1468	2378

* This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022 − 2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022 − 2051. The results account for the incremental variable and fixed costs incurred by manufacturers due to the proposed standards, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low-Economic-Growth case, and High-Economic-Growth case, respectively. In addition, incremental product costs for AFUE standards reflect a medium decline rate in the Primary Estimate, a constant price trend in the Low-Net-Benefits Estimate, and a high decline rate in the High-Net-Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using four different sets of SCC values. The first three use the average SCC calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

† Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with 3-percent discount rate. In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the proposed standards is described in further detail in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed AFUE standards and standby mode and off mode standards represent the maximum improvement in energy efficiency that DOE has determined is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by this proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. DOE is also seeking comment on an option that considers an alternate capacity size for the small furnace threshold for the 80 percent AFUE standard (See section V.C.1), which reduces the fuel switching impacts relative to the proposed option (see Table V.3), and has a significantly lower fraction of consumers who would be negatively impacted (see Table V.41). Based on consideration of the public comments DOE receives in response to this SNOPR and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this supplemental proposal, as well as some of the relevant historical background related to the establishment of amended and new standards for residential NWGFs and MHGFs.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as "covered products"). These products includes the residential furnaces that are the subject of this rulemaking. (42 U.S.C. 6292(a)(5)) EPCA, as amended, prescribed energy conservation standards for these products (42 U.S.C. 6295(f)(1) and (2)), and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)(4)) Under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product no later than six years from the issuance of any final rule establishing or amending a standard for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product prior to the adoption of a new or amended energy conservation standard. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for residential furnaces appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix N.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including residential furnaces. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including residential furnaces, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified after receiving comments on the proposed standard, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination by, to the greatest extent practicable, considering the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as amended, also contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether capacity or another performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Pursuant to amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, DOE may consider the establishment of regional energy conservation standards for furnaces (except boilers). (42 U.S.C. 6295(o)(6)(B)) Specifically, in addition to a base national standard for a product, DOE may establish for furnaces a single more-restrictive regional standard. (42 U.S.C. 6295(o)(6)(B)) The regions must include only contiguous States (with the exception of Alaska and Hawaii, which may be included in regions with which they are not contiguous), and each State may be placed in only one region (*i.e.*, an entire State cannot simultaneously be placed in two regions, nor can it be divided between two regions). (42 U.S.C. 6295(o)(6)(C)) Further, DOE can establish the additional regional standards only: (1) Where doing so would produce significant energy savings in comparison to a single national standard; (2) if the regional standards are economically justified; and (3) after considering the impact of these standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers. (42 U.S.C. 6295(o)(6)(D))

Finally, pursuant to the amendments contained in EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for residential furnaces address standby mode and off mode energy use. In this rulemaking, DOE intends to adopt separate energy conservation standards to address standby mode and off mode energy use.

B. Background

1. Current Standards

EPCA established the energy conservation standards that apply to most residential furnaces currently being manufactured. The original standards established a minimum AFUE of 75-percent for mobile home furnaces. For all other furnaces, the original standards generally established a minimum AFUE of 78-percent. However, Congress recognized the potential need for a separate standard based on the capacity of a furnace and directed DOE to undertake a rulemaking to establish a standard for "small" gas furnaces (those having an input of less than 45,000 Btu per hour). (42 U.S.C. 6295(f)(1)–(2)) DOE initially established a standard for small furnaces at the same level as furnaces generally (*i.e.*, a minimum AFUE of 78-percent). (10 CFR 430.32(e)(1)(i); 54 FR 47916 (Nov. 17, 1989))

EPCA also required DOE to conduct two rounds of rulemaking to consider amended standards for residential furnaces (42 U.S.C. 6295(f)(4)(B)–(C)), a requirement subsequently expanded to encompass a six-year look back review of all covered products (42 U.S.C. 6295(m)(1)). In a final rule published on November 19, 2007 (November 2007 final rule), DOE prescribed amended energy conservation standards for residential furnaces manufactured on or after November 19, 2015. 72 FR 65136. The November 2007 final rule revised the energy conservation standards to 80-percent AFUE for non-weatherized gas furnaces (NWGF), to 81-percent AFUE for weatherized gas furnaces, to 80-percent AFUE for mobile home gas furnaces (MHGF), and to 82-percent AFUE for non-weatherized oil-fired furnaces. *Id.* at 65169. Based on market assessment and the standard levels at issue, the October 2006 NOPR proposed and the November 2007 final rule established standards without regard to the certified input capacity of a furnace. 71 FR 59204, 59214 (Oct. 6, 2006); 72 FR 65136, 65169 (Nov. 19, 2007). Subsequently, on October 31, 2011, DOE published a notice of effective date and compliance dates (76 FR 67037) to confirm amended energy conservation standards and compliance dates contained in a June 27, 2011 direct final rule (June 2011 DFR; 76 FR 37408) for residential central air conditioners and residential furnaces. These two rulemakings represented the first and the second, respectively, of the two rulemakings required under 42 U.S.C. 6295(f)(4)(B)–(C) to consider amending the standards for residential furnaces.

The June 2011 DFR and October 2011 notice of effective date and compliance dates amended, in relevant part, the energy conservation standards and compliance dates for three product classes of residential furnaces (*i.e.*, NWGFs, MHGFs, and non-weatherized oil furnaces). The existing standards were left in place for three classes of residential furnaces (*i.e.*, weatherized oil-fired furnaces, mobile home oil-fired furnaces, and electric furnaces). For one class of residential furnaces (weatherized gas furnaces), the existing standard was left in place, but the compliance date was amended. Electrical standby mode and off mode energy consumption standards were established for non-weatherized gas and oil-fired furnaces (including mobile home furnaces) and electric furnaces. Compliance with the energy conservation standards promulgated in the June 2011 DFR was to be required on May 1, 2013 for non-weatherized furnaces and on January 1, 2015 for weatherized furnaces. 76 FR 37408, 37547–48 (June 27, 2011); 76 FR 67037, 67051 (Oct. 31, 2011). The amended energy conservation standards and compliance dates in the June 2011 DFR would have superseded those standards and compliance dates promulgated by the November 2007 final rule for NWGFs, MHGFs, and non-weatherized oil furnaces. Similarly, the amended compliance date for weatherized gas furnaces in the June 2011 DFR superseded the compliance date in the November 2007 final rule.

After publication of the October 2011 notice, the American Public Gas Association (APGA) sued DOE[15] in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to invalidate the rule as it pertained to NWGFs (as discussed further in section II.B.2). Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.*, No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). The parties to the litigation engaged in settlement negotiations which ultimately led to filing of an unopposed motion on March 11, 2014, seeking to vacate DOE's rule in part and to remand to the agency for further rulemaking. On April 24, 2014, the Court granted the motion and ordered that the standards established for NWGFs and MHGFs be vacated and remanded to DOE for further rulemaking. As a result, only the standards for non-weatherized oil-fired furnaces and weatherized gas furnaces established in the June 2011 DFR went into effect as stated in that final rule. The standards established by the June 2011 DFR for the NWGFs and MHGFs did not go into effect, and thus, compliance with the standards established in the November 2007 final rule for these products was required beginning on November 19, 2015. As stated previously, the standards for weatherized oil-fired furnaces, mobile home oil-fired furnaces, and electric furnaces were unchanged, and as such, the original standards for those product classes remain in effect. The standards for all residential furnaces, including the two product classes being analyzed in this SNOPR, are set forth in DOE's regulations at 10 CFR 430.32(e)(1)(ii). Table II.1 below shows the current standards for product classes that have been previously amended (either by the November 2007 final rule or June 2011 DFR) and the existing standards for the product classes where the AFUE standard has not been amended.

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[15] After APGA filed its petition for review on December 23, 2011, various entities subsequently intervened.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL FURNACES

Product class	Minimum annual fuel utilization efficiency (%)	Compliance date
Non-weatherized Gas *	80	11/19/2015
Mobile Home Gas *	80	11/19/2015
Weatherized Gas	81	1/1/2015
Non-weatherized Oil-Fired	83	5/1/2013
Mobile Home Oil-Fired	75	9/1/1990
Weatherized Oil-Fired	78	1/1/1992
Electric	78	1/1/1992

* Only non-weatherized gas and mobile home gas furnaces are being analyzed for this current rulemaking.

2. History of Standards Rulemaking for Residential Furnaces

Given the somewhat complicated interplay of recent DOE rulemakings and statutory provisions related to residential furnaces, DOE provides the following regulatory history as background leading to the present rulemaking. Amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) established EPCA's original energy conservation standards for furnaces, consisting of the minimum AFUE levels described above for mobile home furnaces and for all other furnaces except "small" gas furnaces. (42 U.S.C. 6295(f)(1)–(2)) Pursuant to 42 U.S.C. 6295(f)(1)(B), in November 1989, DOE adopted a mandatory minimum AFUE level for "small" furnaces. 54 FR 47916 (Nov. 17, 1989). The standards established by NAECA and the November 1989 final rule for "small" gas furnaces are still in effect for mobile home oil-fired furnaces, weatherized oil-fired furnaces, and electric furnaces.

Pursuant to EPCA, DOE was required to conduct two rounds of rulemaking to consider amended energy conservation standards for furnaces. (42 U.S.C. 6295(f)(4)(B) and (C)) In satisfaction of this first round of amended standards rulemaking under 42 U.S.C. 6295(f)(4)(B), as noted above, DOE published a final rule in the **Federal Register** on November 19, 2007 (the November 2007 Rule) that revised these standards for most furnaces, but left them in place for two product classes (*i.e.*, mobile home oil-fired furnaces and weatherized oil-fired furnaces). The standards amended in the November 2007 Rule were to apply to furnaces manufactured or imported on and after November 19, 2015. 72 FR 65136. The energy conservation standards in the November 2007 final rule consist of a minimum AFUE level for each of the six classes of furnaces. *Id.* at 65169. As previously noted, based on the market analysis for the November 2007 final rule and the standards established under that rule, the November 2007 final rule eliminated the distinction between furnaces based on their certified input capacity, (*i.e.*, the standards applicable to "small" furnaces were established at the same level and as part of their appropriate class of furnace generally).

Following DOE's adoption of the November 2007 final rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (Second Circuit) to invalidate the rule. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.*, Nos. 08– 0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008). The petitioners asserted that the standards for residential furnaces promulgated in the November 2007 final rule did not reflect the "maximum improvement in energy efficiency" that "is technologically feasible and economically justified" under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 final rule would be vacated, but indicated that DOE would revisit its initial conclusions outlined in the November 2007 Rule in a subsequent rulemaking action. DOE also agreed that the final rule in that subsequent rulemaking action would address both regional standards for furnaces, as well as the effects of alternate standards on natural gas prices. The Second Circuit granted DOE's motion on April 21, 2009. DOE notes that the Second Circuit's order did not vacate the energy conservation standards set forth in the November 2007 final rule, and during the remand, they went into effect as originally scheduled.

As described previously in section II.B, on June 27, 2011, DOE published a direct final rule (June 2011 DFR) revising the energy conservation standards for residential furnaces pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.* 76 FR 37408. In the June 2011 DFR, DOE considered the amendment of the same six product classes considered in the November 2007 final rule analysis plus electric furnaces. As discussed in section II.B.1, the June 2011 DFR amended the existing energy conservation standards for NWGFs, MHGFs, and non-weatherized oil furnaces, and amended the compliance date (but left the existing standards in place) for weatherized gas furnaces. The June 2011 DFR also established electrical standby mode and off mode standards for NWGFs, non-weatherized oil furnaces, and electric furnaces. DOE confirmed the standards and compliance dates promulgated in the June 2011 DFR in a notice of effective date and compliance dates published on October 31, 2011. 76 FR 67037.

As noted earlier, following DOE's adoption of the June 2011 DFR, APGA filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit to invalidate the DOE rule as it pertained to NWGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.*, No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). On April 24, 2014, the Court granted a motion that approved a settlement agreement that was reached between DOE, APGA, and the various intervenors in the case, in which DOE agreed to a partial vacatur and remand of the NWGFs and MHGFs portions of the June 2011 DFR in order to conduct further notice-and-comment rulemaking. Accordingly, the Court's order vacated the June 2011 DFR in part (*i.e.*, those portions relating to NWGFs and MHGFs) and remanded to the agency for further rulemaking.

As part of the settlement, DOE agreed to use best efforts to issue a notice of proposed rulemaking within one year of the remand, and to issue a final rule within the later of two years of the issuance of remand, or one year of the issuance of the proposed rule, including at least a ninety-day public comment period. Due to the extensive and recent rulemaking history for residential furnaces, as well as the associated opportunities for notice and comment described above, DOE forwent the typical earlier rulemaking stages (*e.g.*, Framework Document, preliminary analysis) and instead published a NOPR on March 12, 2015 (March 2015 NOPR). 80 FR 13120. DOE concluded that there was a sufficient recent exchange of information between interested parties and DOE regarding the energy conservation standards for residential furnaces such as to allow for this proceeding to move directly to the NOPR stage. Moreover, DOE notes that under 42 U.S.C. 6295(p) and 5 U.S.C. 553(b) and (c), DOE is only required to publish a notice of proposed rulemaking and accept public comments before amending energy conservation standards in a final rule (*i.e.*, DOE is not required to conduct any earlier rulemaking stages).

In the March 2015 NOPR, DOE proposed adopting a national standard of 92-percent AFUE for all NWGFs and MHGFs. 80 FR 13120, 13198 (March 12, 2015). In response, while some stakeholders supported the national 92-percent AFUE standard, others opposed the proposed standards and encouraged DOE to withdraw the March 2015 NOPR. (See section III.F.1 for comments providing specific reasons for opposing or supporting the proposed standards are summarized in that section.)

Multiple parties suggested that DOE should create a separate product class for furnaces based on input capacity and set lower standards for the "small furnaces" product class in order to mitigate some of the negative impacts of the proposed standards. Among other reasons, commenters suggested that such an approach would reduce the number of low-income consumers switching to electric heat due to higher installation costs, because those consumers typically have smaller homes in which a furnace with a lower input capacity would be installed and, therefore, would not be impacted if a condensing standard were adopted only for higher-input-capacity furnaces. (These comments are discussed further in section IV.I.A.) To explore the potential impacts of such an approach, DOE published a notice of data availability (NODA) in the **Federal Register** on September 14, 2015 (September 2015 NODA). 80 FR 55038. The September 2015 NODA contained analysis that considered thresholds for defining the small furnace product class from 45 kBtu/h to 65 kBtu/h certified input capacity and maintaining a non-condensing 80-percent AFUE standard for that product class, while increasing the standard to a condensing level (*i.e.*, either 90-percent, 92-percent, 95-percent, or 98-percent AFUE) for large furnaces. *Id.* at 55042. The results indicated that life-cycle cost savings increased and the share of consumers with net costs decreased as a result of an 80-percent AFUE standard for the small furnace product class. *Id.* at 55042–44. It also showed that national energy savings increased because fewer consumers switched to more energy-intensive electric heat. *Id.* at 55044.

DOE has initiated this rulemaking in partial fulfillment of the remand in *American Public Gas Association, et al.* v. *Department of Energy, et al.* and pursuant to its authority under 42 U.S.C. 42 U.S.C. 6295(f)(4)(C), which requires DOE to conduct a second round of amended standards rulemaking for residential non-weatherized gas furnaces and mobile home gas furnaces. EPCA, as amended by EISA 2007, also requires that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of the determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) To this end, DOE published a NOPR for the subject furnaces on March 12, 2015, and this SNOPR is a continuation of that rulemaking in light of comments and other information received at earlier stages of the process. Once completed, this rulemaking will satisfy both statutory provisions.

Furthermore, EISA 2007 amended EPCA to require that any new or amended energy conservation standard adopted after July 1, 2010, shall address standby mode and off mode energy consumption pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) If feasible, the statute directs DOE to incorporate standby mode and off mode energy consumption into a single standard with the product's active mode energy use. If a single standard is not feasible, DOE may consider establishing a separate standard to regulate standby mode and off mode energy consumption. Consequently, DOE is considering standby mode and off mode energy use as part of this rulemaking for residential furnaces. In the March 2015 NOPR, DOE proposed a maximum energy use of 8.5 watts in both standby and off mode for NWGF and MHGF. 80 FR 13120, 13198 (March 12, 2015). The changes in this SNOPR apply only to the active mode AFUE standards, and therefore, the proposed standby mode and off mode standards set forth in the March 2015 NOPR remain part of this SNOPR.

DOE received a number of written comments from interested parties in response to the March 2015 NOPR and September 2015 NODA. DOE considered these comments, as well as comments from the March 2015 NOPR public meeting, in preparing this SNOPR. The commenters are summarized in Table II.2. Relevant comments, and DOE's responses, are provided in the appropriate sections of this notice.[16]

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[16] To the extent interested parties filed requests under the Freedom of Information Act (FOIA) that related to this rulemaking, such requests were addressed through DOE's FOIA process under 10 CFR part 1004.

TABLE II.2—INTERESTED PARTIES PROVIDING WRITTEN COMMENT ON THE NOPR AND NODA FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

Name	Acronyms	Type
A Ware Productions	A Ware	CR
African American Environmentalist Association	AAEA	CR
American Gas Association and American Public Gas Association	AGA and APGA	U
American Gas Association, American Public Gas Association, and Gas Technology Institute	AGA, APGA, and GTI	U
AGL Resources		U
Air Conditioning Contractors of America	ACCA	TA
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	TA
Alliance to Save Energy	ASE	EA
Allied Air		M
American Association of Blacks in Energy	AABE	CR
American Council for an Energy-Efficient Economy	ACEEE	EA
American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, and Alliance to Save Energy.	Joint Advocates	EA
American Energy Alliance	AEA	EA
American Gas Association	AGA	U
American Public Gas Association	APGA	U
American Public Power Association	APPA	U
Anonymous		I
Appliance Standards Awareness Project	ASAP	EA
Austell Natural Gas System	Austell	U
Borough of Chambersburg, PA	Chambersburg	G
California Energy Commission	CEC	G
Cato Institute		PP
CenterPoint Energy		U
City of Adairsville, Georgia	Adairsville	G
City of Cairo, Georgia	Cairo	G
City of Camilla, Georgia	Camilla	G
City of Cartersville, Georgia	Cartersville	G
City of Commerce, Georgia	Commerce	G
City of Covington, Georgia	Covington	G
City of Dublin, Georgia	Dublin	G
City of Lawrenceville, Georgia	Lawrenceville	G
City of Louisville, Georgia	Louisville	G
City of Monroe, Georgia	Monroe	G
City of Moultrie	Moultrie	G
City of Sugar Hill, Georgia	Sugar Hill	G
City of Sylvania, Georgia	Sylvania	G
City of Thomasville, Georgia	Thomasville	G
City of Tifton, Georgia	Tifton	G
City of Toccoa/Toccoa Natural Gas	Toccoa	G/U
Clearwater Gas System	CGS	U
Members of the U.S. Congress*	Joint Congress Members	G
Gregory W. Meeks (Member of Congress)	Meeks	G
Sanford D. Bishop, Jr. (Member of Congress)	Bishop	G
Donald M. Payne, Jr. (Member of Congress)	Payne	G
Consumer Federation of America, National Consumer Law Center, Massachusetts Union of Public Housing Tenants, and Texas Ratepayers' Organization to Save Energy.	Joint Consumer Commenters	CR
Contractor Advisors		C
Arthur Corbin	Corbin	I
Jim Darling	Darling	I
DC Jobs or Else	DC Jobs or Else	CR
Earthjustice		EA
Edison Electric Institute	EEI	U
Energy Association of Pennsylvania		U
Environmental Defense Fund, Institute for Policy Integrity at NYU School of Law, Natural Resources Defense Council, and Union of Concerned Scientists.	Joint Advocates	EA
Fitzgerald Utilities	Fitzgerald	U
Catherine Fletcher	Fletcher	I
Florida Natural Gas Association	FNGA	U
Gas Technology Institute	GTI	U
Goodman Global, Inc.	Goodman	M
Heating, Air-Conditioning & Refrigeration Distributors International	HARDI	TA
Jennifer Hombach	Hombach	I
Ingersoll Rand	Ingersoll Rand	M
David Johnson	Johnson	I
Johnson Controls, Inc.	JCI	M
Jointly Owned Natural Gas		U
Aaron Kelly	Kelly	I
The Laclede Group, Inc	Laclede	U
Lennox International Inc.	Lennox	M
Liberty Utilities		U

TABLE II.2—INTERESTED PARTIES PROVIDING WRITTEN COMMENT ON THE NOPR AND NODA FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES—Continued

Name	Acronyms	Type
Manufactured Housing Institute	MHI	TA
Mark Nayes	Nayes	I
Mercatus Center at George Mason University	Abdukadirov *et al.*	I
Metal-Fab		CS
Metropolitan Utilities District, Omaha, NE	Metropolitan Utilities District	U
Don Meyers	Meyers	I
Cameron Moore	Moore	I
Mortex Products, Inc.	Mortex	M
Municipal Gas Authority of Georgia	Gas Authority	U
National Association of Home Builders	NAHB	TA
National Energy & Utility Affordability Coalition	NEUAC	CR
National Multifamily Housing Council, National Apartment Association, National Leased Housing Association.	NMHC, NAA, NLHA	TA
National Propane Gas Association	NPGA	U
Natural Gas Association of Georgia	NGA	U
Natural Resources Defense Council	NRDC	EA
New Jersey Natural Gas	NJNG	U
NiSource Inc.	NiSource	U
Nortek Global HVAC	Nortek	M
Northeast Energy Efficiency Partnerships	NEEP	EA
ONE Gas, Inc.	ONE Gas	U
Pacific Gas and Electric Company	PG&E	U
Pennsylvania Chamber of Business and Industry		G
Pennsylvania Department of Environmental Protection		G
Philadelphia Gas Works	PGW	U
Plumbing-Heating-Cooling Contractors	PHCC	C
Prime Energy Partners, LLC	Prime Energy Partners	
Questar Gas Company	Questar Gas	U
Rheem Manufacturing Company	Rheem	M
David Schroeder	Schroeder	I
Terry Small	Small	I
Southern California Gas Company	SoCalGas	U
Southern Company		U
Southern Gas Association	SGA	U
Southside Heating and Air Conditioning		C
State of Indiana	Indiana	G
Kimberly Swanson	Swanson	I
Town of Rockford Alabama	Rockford	G
Ubuntu Center of Chicago	Ubuntu	CR
United Technologies Building and Industrial Systems—Carrier Corporation	Carrier	M
United States Joint Representatives **	Joint Representatives	G
University of Pennsylvania, Kleinman Center for Energy Policy	Kleinman Center	EI
U.S. Chamber of Commerce, the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Brick Industry Association, the Council of Industrial Boiler Owners, the National Association of Home Builders, the National Association of Manufacturers, the National Mining Association, the National Oilseed Processors Association, and the Portland Cement Association.	Associations	TA
Vectren Corporation	Vectren	U
John von Harz	von Harz	I
Washington Gas Light Company	Washington Gas	U
Walter Wood	Wood	I

C: Mechanical Contractor; CS: Component Supplier; CR: Consumer Representative; EA: Efficiency/Environmental Advocate; EI: Educational Institution; G: Government; I: Individual; M: Manufacturer; PP: Public Policy Research Organization; TA: Trade Association; U: Utility or Utility Trade Association.

*Paul D. Tonka, Raúl M. Grijalva, Michael M. Honda, Scott H. Peters, Alan S. Lowenthal, Jerrold Nadler, Sander M. Levin, Chris Van Hollen, Alan S. Lowenthal, Rep. Ted Lieu, Donald S. Beyer, Jr., Louise M. Slaughter, Rep. Lois Capps, and Donna F. Edwards.

**Mo Brooks, Tom Price, Lou Barletta, Bradley Byrne, Glenn 'GT' Thompson, Steve Russell, Joe Heck, Gary Palmer, Kevin Yoder, Jim Bridenstine, Scott Tipton, Robert Pittenger, Chuck Fleischmann, Robert Aderholt, Mimi Walters, Barry Loudermilk, Gregg Harper, Mark Walker, Brian Babin, Candice S. Miller, Chris Stewart, Mike D. Rogers, Jim Renacci, Bob Gibbs, Dave Brat, Jeff Miller, Phil Roe, David Schweikert, Tom Marino, David B. McKinley, Scott DesJarlais, Marc Veasey, Ralph Abraham, Matt Salmon, David Rouzer, Richard Hudson, Cresent Hardy, Buddy Carter, Mike Pompeo, Martha Roby, Glenn Grothman, Tom Emmer, Paul Gosar, Ted S. Yoho, Rick Allen, Dan Benishek, David Young, Randy Weber, Mark Meadows, Kay Granger, Blake Farenthold, Bill Flores, Kevin Cramer, Daniel Webster, Tim Huelskamp, Markwayne Mullin, Chris Collins, Jason Smith, Steve Womack, Diane Black, Keith Rothfus, Sean P. Duffy, Renee Ellmers, Alex X. Mooney, Jim Costa, Brad Wenstrup, Sam Graves, Charles W. Boustany, Jr., Andy Barr, Mike Bost, Doug Collins, Jody Hice, Mike Kelly, Jim Jordan, Lynn Jenkins, Andy Harris, Billy Long, Bill Johnson, Rob Woodall, David W. Jolly, Rodney Davis, Joe Barton, Gus M. Bilirakis, Pete Olson, Randy Forbes, Ed Whitfield, Ken Calvert, John Duncan, Henry Cuellar, Steve King, John Shimkus, Jeb Hensarling, Pete Sessions, Vicky Hartzler, Adrian Smith, Louie Gohmert, Marsha Blackburn, Sam Johnson, Tom McClintock, Walter Jones, Patrick T. McHenry, Steve Chabot, Doug Lamborn, Frank D. Lucas, Sanford D. Bishop, Jr., Lamar Smith, Austin Scott, Mick Mulvaney, Steve Pearce, Brett Guthrie, Trent Franks, Blaine Luetkemeyer, Tom Graves, Mike Coffman, Robert E. Latta, F. James Sensenbrenner, Jr., Stephen Fincher, Tom Cole, Lynn Westmoreland, John Ratcliffe, and John Moolenaar.

III. General Discussion

DOE issued this supplemental proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. DOE considered all comments received in response to both the March 2015 NOPR and the September 2015 NODA when developing this SNOPR, but acknowledges that in light of this modified proposal some comments received to date may no longer apply. The following discussion addresses issues raised by commenters in response to both notices on the listed topics.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or by other performance-related feature that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors such as the utility of the feature to the consumer and other factors DOE deems appropriate. (42 U.S.C. 6295(q))

DOE agreed to the partial vacatur and remand of the June 2011 DFR, specifically as it related to energy conservation standards for NWGFs and MHGFs in the settlement agreement to resolve the litigation in *American Public Gas Ass'n* v. *U.S. Dept. of Energy* (No. 11–1485, D.C. Cir. Filed Dec 23, 2011). 80 FR 13120, 13130–32 (March 12, 2015). These two product classes were evaluated in the March 2015 NOPR. In today's SNOPR, DOE is proposing to further divide NWGFs into two product classes based on capacity. For a detailed discussion of this proposal and the comments on product classes received in response to the March 2015 NOPR and September 2015 NODA, please see Section IV.A.1.

B. Test Procedure

DOE's current energy conservation standards for residential furnaces are expressed in terms of AFUE for fossil fuel consumption (*see* 10 CFR 430.32(e)(1)). AFUE is an annualized fuel efficiency metric that fully accounts for fuel consumption in active, standby, and off modes. The existing DOE test procedure for determining the AFUE of residential furnaces is located at 10 CFR part 430, subpart B, appendix N. The current DOE test procedure for residential furnaces was originally established by a May 12, 1997 final rule, which incorporates by reference the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)/American National Standards Institute (ANSI) Standard 103–1993, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (1993). 62 FR 26140, 26157.

On October 20, 2010, DOE updated its test procedures for residential furnaces in a final rule published in the **Federal Register** (October 2010 test procedure rule). 75 FR 64621. This rule amended DOE's test procedure for residential furnaces and boilers to establish a method for measuring the electrical energy use in standby mode and off mode for gas-fired, oil-fired, and electric furnaces pursuant to requirements established by EISA 2007. These test procedure amendments were primarily based on and incorporate by reference provisions of the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), "Household electrical appliances—Measurement of standby power." On December 31, 2012, DOE published a final rule in the **Federal Register** which updated the incorporation by reference of the standby mode and off mode test procedure provisions to refer to the latest edition of IEC Standard 62301 (Second Edition). 77 FR 76831.

On July 10, 2013, DOE published a final rule in the **Federal Register** (July 2013 final rule) that modified the existing testing procedures for residential furnaces and boilers. 78 FR 41265. The modification addressed the omission of equations needed to calculate AFUE for two-stage and modulating condensing furnaces and boilers that are tested using an optional procedure provided by section 9.10 of ASHRAE 103–1993 (incorporated by reference into DOE's test procedure), which allows the test engineer to omit the heat-up and cool-down tests if certain conditions are met. Specifically, the DOE test procedure allows condensing boilers and furnaces to omit the heat-up and cool-down tests provided that the units have no measurable airflow through the combustion chamber and heat exchanger during the burner off period and have post-purge period(s) of less than 5 seconds. For two-stage and modulating condensing furnaces and boilers, ASHRAE 103–1993 (and by extension the DOE test procedure) does not contain the necessary equations to calculate the heating seasonal efficiency (which contributes to the ultimate calculation of AFUE) when the option in section 9.10 is selected. The July 2013 final rule adopted two new equations needed to account for the use of section 9.10 for two-stage and modulating condensing furnaces and boilers. *Id.*

On March 11, 2015, DOE published a notice of proposed rulemaking for its test procedure for residential furnaces and boilers in the **Federal Register** (March 2015 Test Procedure NOPR). 80 FR 12876. In the March 2015 Test Procedure NOPR, DOE proposed a range of changes to the test procedure including incorporating by reference ANSI/ASHRAE 103–2007 in place of ANSI/ASHRAE 103–1993. After publication of the March 2015 Test Procedure NOPR, DOE granted a request from AHRI to reopen the comment period for an additional 45 days, so as to allow further time to conduct product testing and to review supporting information. 80 FR 31324 (June 2, 2015). In response to the March 2015 Test Procedure NOPR, several commenters raised concerns that some proposed test provisions would affect efficiency ratings. DOE published a final rule for the residential furnaces and boilers test procedure in the **Federal Register** on January 15, 2016 (January 2016 test procedure final rule). 81 FR 2628. In that final rule, DOE did not adopt those provisions for which commenters expressed concern regarding impacts on efficiency ratings, including a decision to withdraw its proposal to incorporate by reference ANSI/ASHRAE 103–2007. *Id.* at 2628–30. The final revisions included:

- Clarification of the electrical power term "PE";
- Adoption of a smoke stick test for determining use of minimum default draft factors;
- Allowance for the measurement of condensate under steady-state conditions;
- Reference to manufacturer's installation and operation manual and clarifications for when that manual does not specify test set-up;
- Specification of ductwork requirements for units that are installed without a return duct; and
- Revision of the requirements regarding AFUE reporting precision.

Id. at 2628.

DOE determined that none of the adopted test procedure amendments would alter the projected measured energy efficiency or energy use of residential furnaces. 81 FR 2628–2641 (Jan. 15, 2016). Commenters also raised issues regarding the timing of the test procedure rulemaking vis-à-vis the standards rulemaking. In response to the March 2015 NOPR, AHRI asserted that the timing of the test procedure rulemaking and proposed standards rulemaking was contrary to both EPCA and DOE's own regulation on process.

AHRI added that it is unfair to propose a standard that will be enforced by DOE and FTC in terms of labeling requirements, but that will be measured by some undetermined test procedure. AHRI further stated that it is only after DOE has considered and resolved all comments on the test procedure that the required analysis of the impact on the related standard can be actually determined. (AHRI, No. 0159 at pp. 9–10) Several stakeholders stated that the test procedure must be finalized before issuing a NOPR for efficiency standards, which DOE did not do for residential furnaces. (AGA, No. 0118 at p. 6; Vectren, No. 0111 at p. 7; Goodman, No. 0135 at p. 10; Laclede, No. 0141 at p. 35, JCI, No. 0148 at pp. 3–4; ACCA, No. 0158–1 at pp. 4–5; APGA, No. 0106 at pp. 8–9) AGA and HARDI stated that stakeholders cannot properly assess the proposed standards without knowing the impact of the final test procedure on AFUE. (AGA, No. 0118 at pp. 43–44; HARDI, No. 0131 at p. 2)

In response to the March 2015 NOPR and the September 2015 NODA, several stakeholders expressed concern about the potential change in furnace efficiency due to the provisions of the proposed furnace and boiler test procedure and the resulting impact on the standards rulemaking analyses. (Laclede, No. 0141 at p. 35; JCI, No. 0148 at pp. 3–4; Ingersoll Rand, No. 0156 at p. 7; Ingersoll Rand, No. 0182 at p. 2) Ingersoll Rand also suggested that the amended test procedure proposed in the March 2015 Test Procedure NOPR would have an impact on the measured efficiency of furnaces. Ingersoll Rand suggested that on average, two-stage/modulating condensing furnaces would see a drop of 0.7-percent AFUE, and two-stage/modulating non-condensing furnaces would see an increase of 0.4-percent AFUE under the proposed test procedure, and that the efficiency levels analyzed in the engineering analysis should be adjusted based on these changes in ratings. (Ingersoll Rand, No. 0182 at p. 2) AGA urged DOE to issue an SNOPR and re-open the comment period after the test procedure is finalized to implement appropriate adjustments regarding the test procedure. (AGA, No. 0118 at pp. 43–44)

In response, DOE finalized its amendments to the residential furnace and boiler test procedure on January 15, 2016, which means that the test procedure amendments have been completed as of the issuance of the modified proposal contained in this SNOPR. Furthermore, in the January 2016 test procedure final rule, DOE addressed the comments regarding the timing of that test procedure final rule and the standards rulemaking process, stating that appendix A to 10 CFR part 430, subpart C, establishes procedures, interpretations, and policies to guide DOE in the consideration and promulgation of new or revised appliance efficiency standards under EPCA. (See section 1 of 10 CFR part 430, subpart C, appendix A) Those procedures are a general guide to the steps DOE typically follows in promulgating energy conservation standards, but the guidance recognizes that DOE can and will, on occasion, deviate from the typical process. (See 10 CFR part 430, subpart C, appendix A, section 14(a)) Accordingly, DOE concluded that there was no basis to either: (1) Delay the final rules adopting standards for residential furnaces and boilers; or (2) suspend the test procedure rulemaking until the standards rulemaking has been completed. 81 FR 2628, 2631 (Jan. 15, 2016). With regards to the effect of test procedure changes on measured efficiency and accounting for such changes in the standards rulemaking analyses, DOE again notes that its final rule did not adopt those specific provisions about which commenters on the test procedure rulemaking expressed concern for these impacts. As DOE concluded in the January 2016 test procedure final rule, the amendments to the test procedure adopted in that final rule will not alter the measured energy efficiency or energy use of the covered products that are subject to the test procedures. *Id.* at 2642. Therefore, no further action is necessary in this standards rulemaking in order to accommodate the test procedure amendments. This SNOPR is consistent with the guidance provided in the Process Rule, section 7(c) of 10 CFR part 430, subpart C, appendix A, because it was issued subsequent to the finalization of the relevant test procedure.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this notice discusses the results of the screening analysis for NWGFs and MHGFs, particularly the designs DOE considered, those it screened out, and those that are the basis for the potential standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the SNOPR technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for NWGFs and MHGFs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this SNOPR and in chapter 5 of the SNOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from application of the TSL to NWGFs and MHGFs purchased in the 30-year period that begins in the expected first year of compliance with the proposed standards (2022–2051).[17] The savings are measured over the entire lifetime of NWGFs and MHGFs purchased in the above 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (NIA) spreadsheet model to estimate national energy savings (NES) from potential amended standards for NWGFs and MHGFs. The NIA spreadsheet model (described in section IV.H of this SNOPR) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy impacts on an annual basis in terms of primary (source) energy, which is the energy that is used to generate and transmit the site electricity. To calculate the primary energy impacts, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) most recent *Annual Energy Outlook* (*AEO*).[18] DOE also calculates NES in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy conservation standards.[19] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this notice. For natural gas, the primary energy savings are considered to be equal to the site energy savings.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended "significant" energy savings in the context of EPCA to be savings that are not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section V.B.3.a), are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D, DOE uses the NIA spreadsheet models to project national energy savings.

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[17] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this SNOPR are described in section V.A. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[18] At the time when the SNOPR was prepared, *AEO 2015* was the most recent available *AEO.* DOE intends to use *AEO 2016* for the final rule.

[19] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this supplemental proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (GHGs) associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.B.6 of this notice. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described above, DOE could potentially consider such information under "other factors."

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first full year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9.d of this document.

F. Other Issues

1. Economic Justification of the March 2015 NOPR Proposed Standards

a. General

The March 2015 NOPR elicited a large number of public comments which represented a range of views regarding DOE's proposed standards for NWGFs and MHGFs and the economic justification and other impacts thereof. Comments on the general reasons for opposing or supporting the proposed standards are summarized and summarily addressed here. Comments related to DOE's NOPR analysis, and how DOE addressed them in its subsequent analyses, are presented in section IV.

Several stakeholders stated that there was no economic justification for a national condensing standard for NWGFs. (AGA, No. 0036 at p. 3; AGL Resources, No. 0039 at p. 1; APGA, No. 0106 at p. 12; AGL Resources, No. 0112 at pp. 1–, 2; Carrier, No. 0116 at pp. 3–4; AGA, No. 0118 at pp. 3–5; Lennox, No. 0125 at p. 15; NPGA, No. 0130 at p. 8; SoCalGas, No. 0132 at p. 5; Goodman, No. 0135 at p. 2; Nortek, No. 0137 at p. 2; Laclede, No. 0141 at p. 58; Rheem, No. 0142 at p. 2; JCI, No. 0148 at p. 9; AHRI, No. 0181 at p. 1; Metal-Fab, No. 0192 at p. 2; Municipal Gas Authority of Georgia, No. 0086 at p. 3; Natural Gas Association of Georgia, No. 0110 at p. 1) Stakeholders also expressed concern that the proposed standard would harm rather than benefit consumers. (AGA, No. 0040 at pp. 2–3; AGA, No. 0118 at pp. 2–3; Joint Representatives, No. 0067 at p. 1; NAHB, No. 0124 at p. 5; Southern Gas Association, No. 0145 at p. 1; Energy Association of Pennsylvania, No. 0146 at p. 1; NiSource, No. 0127 at pp. 8–9) Many stakeholders stated that the proposed standard would result in a net cost for many consumers, particularly those living in the south and low-income consumers (see section III.F.1.b), and would cause an unacceptable amount of switching from NWGFs to electric heating products (see section III.F.1.c).

Many other stakeholders opposed the proposed 92-percent AFUE national standards for NWGFs and encouraged DOE to withdraw the NOPR. (Moore, No. 0033 at p. 1; Wood, No. 0068 at p.

1; Dublin, No. 0071 at p. 1; CenterPoint Energy, No. 0083 at p. 5; NGA, No. 0110 at p. 1; PGW, No. 0122 at p. 1; NiSource, No. 0127 at p. 10; Nortek, No. 0137 at p. 2; Meeks, No. 0140 at p. 2; Laclede, No. 0141 at p. 7; Rockford, No. 0070 at p. 1; Chambersburg, No. 0084 at p. 1; Dublin, No. 0071 at p. 1; Sylvania, No. 0085 at p. 1; Louisville, No. 0087 at p. 1; Monroe, No. 0088 at p. 1; Cairo, No. 0089 at p. 1; Jointly Owned Natural Gas, No. 0090 at p. 1; Adairsville, No. 0091 at p. 1; Camilla, No. 0092 at p. 1; Sugar Hill, No. 0093 at p. 1; Covington, No. 0096 at p. 1; Austell, No. 0097 at p. 1; Fitzgerald, No. 0100 at p. 1; Cartersville, No. 0101 at p. 1; Commerce, No. 0103 at p. 1; Thomasville, No. 0104 at p. 1; Toccoa, No. 0105 at p. 1; Tifton, No. 0114 at p. 1; Moultrie; No. 0121 at p. 1; SGA, No. 0145 at p. 2; Gas Authority, No. 0086 at pp. 7–8; Laclede, No. 0178 at pp. 3–4; Rheem, No. 0184 at p. 2; Johnson, No. 0190 at p. 1; AABE, No. 0197 at p. 1; Rheem, No. 0199 at p. 2; APGA, No. 0106 at pp. 1, 50; AGA, No. 0118 at p. 45; SoCalGas, No. 0132–1 at p. 2)

On the other hand, the Joint Congress Members, PG&E, CEC, the Joint Consumer Commenters, ACEEE, ASE, NRDC, NEEP, and Fletcher supported the standards proposed in the NOPR. (Joint Consumer Commenters, No. 0123 at p. 1; PG&E, No. 0153 at pp. 1–2; CEC, No. 0120 at p. 4; Joint Congress Members, No. 0161 at pp. 1–3; ACEEE, No. 0113 at p. 1; ASE, No. 0115 at p. 1; NRDC, No. 0134 at p. 2; NEEP, No. 0150 at p. 2; Fletcher, No. 0064 at p. 1) The Joint Consumer Commenters stated that the performance standards in the proposed rule is are well designed in that it addresses clear market imperfections which lead to market failure; is technology neutral, product neutral, and pro-competitive; is technologically feasible; and offers adequate lead time. (Joint Consumer Commenters, No. 0123 at pp. 27–28) The Joint Congress Members stated that because furnaces are one of the longest-lived products in a home, it is important to set an aggressive standard to ensure that consumers will benefit from maximum energy savings over the lifetime of this investment. NEEP and the Joint Congress Members stated that many States have been actively pursuing and advocating for condensing furnace standards but are preempted by Federal standards. (Joint Congress Members, No. 0161 at pp. 1–3; NEEP, No. 0150 at pp. 1–2) The CEC stated that DOE's current standards for furnaces have formed a significant barrier to California being able to achieve its climate goals for new and existing buildings. The CEC stated that any further delay in adopting more stringent Federal furnace standards threatens to set California back in its efforts to double energy efficiency in existing buildings by 2030 and to achieve zero net energy in newly constructed residential buildings by 2020. (CEC, No. 0120 at p. 3)

ACEEE, ASE, NRDC, PG&E, and Kelly suggested that DOE should establish a 95-percent AFUE national standard for NWGFs. (ACEEE, No. 0113 at p. 4; ASE, No. 0115 at p. 1; NRDC, No. 0134 at p. 3; PG&E, No. 0153 at pp. 2–3; Kelly, No. 0038 at p. 1) Prime Energy Partners and CGS stated that DOE's analysis presents a clear case for a standard for NWGFs at 98-percent AFUE as the maximum improvement in energy efficiency that is technologically feasible and economically justified. (Prime Energy Partners, No. 0143 at p. 2; CGS, No. 0098 at p. 5)

b. Consumer Impacts From the Proposed Standards

AGA stated that DOE should not find that a standard is economically justified when such a significant share of consumers would be worse off under the proposed rule. (AGA, No. 0036 at p. 3; AGA, No. 0118 at p. 5) AGA, Ingersoll Rand, and Laclede stated that the majority of consumers impacted by the rule would see a net cost under a condensing standard. (AGA, No. 0118 at pp. 16, 26; Ingersoll Rand, No. 0156 at p. 2;) JCI and Laclede expressed concern about the number of consumers that would be negatively impacted by a condensing furnace standard. (JCI, No. 0202 at p. 2; Laclede, No. 0141 at p. 6) AGA, CGS, PCCBI, NGA, and SoCalGas stated that the proposed rule would unnecessarily burden millions of residents. (AGA, No. 0036 at pp. 2–3; CGS, No. 0098 at p. 1; PCCBI, No. 0082 at p. 1; NGA, No. 0110 at p. 1; SoCalGas, No. 0132–2 at p. 1) AHRI stated that if the proposed standards are finalized, virtually all affected consumers would experience a net cost. (AHRI, No. 0159 at pp. 57–58) AHRI added that purchasers who do not currently buy condensing furnaces predominantly have poor economic returns or face difficult installations. (AHRI, No. 0159 at pp. 69–70) Metal-Fab stated that due to the higher initial cost of condensing gas furnaces and low natural gas prices, installing a condensing gas furnace does not make economic sense for the majority of U.S. consumers. (Metal-Fab, No. 0192 at p. 1)

A number of stakeholders stated that according to DOE's own analysis for the NOPR, 20 percent of households nationwide would see a net life-cycle cost increase. (AGA, No. 0036 at p. 3; Corbin, No. 0066 at p. 1; Lawrenceville, No. 0074 at p. 1; Mercatus Center, No. 0079 at p. 4; Pennsylvania Chamber of Business and Industry, No. 0082 at p. 1; CenterPoint Energy, No. 0083 at p. 32; Indiana, No. 0094 at p. 1; Vectren, No. 0111 at pp. 2, 5; Goodman, No. 0135 at p. 2; Metropolitan Utilities District, No. 0144 at pp. 1–2; Energy Association of Pennsylvania, No. 0146 at p. 1; ONE Gas, No. 0102 at p. 2) NAHB argued that 20 percent of consumers with net cost is unacceptable, but that such figure would be much higher after incorporating the changes in product cost, energy use, and discount rates that NAHB believes to be more appropriate. NAHB stated that regulations that negatively impact a large portion of the population would result in consumers being priced out of the market for a new home and living in older, less-efficient homes with less-efficient equipment, which is contrary to the purpose of the rule. (NAHB, No. 0124 at p. 5) AGA, ONE Gas, and Vectren also stated that according to DOE's analysis, in the replacement market, fully one-quarter of all households would see a net cost increase. (AGA, No. 0118 at p. 5; ONE Gas, No. 0102 at p. 2; Vectren, No. 0111 at pp. 2, 5) The report by GTI submitted by SoCalGas stated that DOE's analysis shows that more Southern California consumers would suffer a net cost than would experience a net benefit under the proposed standard. (SoCalGas, No. 0132–7 at p. v)

On the other hand, the Joint Consumer Commenters stated that in the case of a NWGF standard at 92-percent AFUE or higher, the winners exceed the losers by a wide margin. (The Joint Consumer Commenters considered those who break even financially and enjoy other indirect benefits of the standard as winners.) The Joint Consumer Commenters stated that the economic analysis also shows that the winners gain more per household, on average, than the losers lose. (Joint Consumer Commenters, No. 0123 at pp. 9–11)

Many stakeholders expressed concern that consumers in the South may be disproportionately impacted by the proposed NWGF standard. (Contractor Advisors, No. 0061 at p. 1; Corbin, No. 0066 at p. 1; U.S. Joint Representatives, No. 0067 at p. 1; Lawrenceville, No. 0074 at p. 1; PGW, No. 0122 at p. 3; Liberty Utilities, No. 0109 at p. 1; NPGA, No. 0130 at p. 5; Anonymous, No. 0060 at p. 1; AEA, No. 0069 at p. 1; Meyers, No. 0072 at p. 1; JCI, No. 0202 at p. 2; Vectren, No. 0111 at pp. 2, 5; CenterPoint Energy, No. 0083 at p. 3; Rheem, No. 0142 at pp. 1–2; MUD,

No. 0144 at p. 1) APGA, AGA, and NAHB stated that the proposed NWGF standard is too burdensome on consumers in the South to be economically justified. (APGA, No. 0034 at p. 6; AGA, No. 0036 at p. 3; AGA, No. 0118 at pp. 27–28; NAHB, No. 0124 at p. 5) Several stakeholders stated that according to DOE's analysis, 31 percent of overall consumers in the South and 39% of low-income consumers in the South would experience a net life-cycle cost increase. (AGA, No. 0036 at p. 3; Corbin, No. 0066 at p. 1; Lawrenceville, No. 0074 at p. 1; Mercatus Center, No. 0079 at p. 4; PCCBI, No. 0082 at p. 1; CenterPoint Energy, No. 0083 at p. 3; Indiana, No. 0094 at p. 1; Vectren, No. 0111 at pp. 2, 5; MHI, No. 0129 at p. 2; Goodman, No. 0135 at p. 2; Nortek, No. 0137 at p. 4; SGA, No. 0145 at p. 1) Many contractors who responded to PHCC and ACCA's survey commented that in some Southern areas, the payback from a condensing furnace is unacceptable to the customer. (PHCC, No. 0136 at p. 12; ACCA, No. 0158–2 at p. 12) Metal-Fab stated that based on current natural gas prices, for consumers in the South, the LCC is higher for a condensing furnace than a non-condensing furnace. (Metal-Fab, No. 0192 at p. 1)

Many stakeholders expressed concern that low-income consumers may be disproportionately impacted by the proposed standards. (Contractor Advisors, No. 0061 at p. 1; Corbin, No. 0066 at p. 1; U.S. Joint Representatives, No. 0067 at p. 1; Lawrenceville, No. 0074 at p. 1; PGW, No. 0122 at p. 3; Liberty Utilities, No. 0109 at p. 1; NPGA, No. 0130 at pp. 3–4; Anonymous, No. 0060 at p. 1; AEA, No. 0069 at p. 1; Meyers, No. 0072 at p. 1; JCI, No. 0202 at p. 24; Vectren, No. 0111 at pp. 2, 5; CenterPoint Energy, No. 0083 at p. 3; Rheem, No. 0142 at pp. 1–2; AGA, No. 0036 at p. 3; Lawrenceville, No. 0074 at p. 1; Mercatus Center, No. 0079 at p. 4; PCCBI, No. 0082 at p. 1; CenterPoint Energy, No. 0083 at p. 3; Indiana, No. 0094 at p. 1; Vectren, No. 0111 at pp. 2, 5; AGL Resources, No. 0112 at p. 8; Goodman, No. 0135 at p. 2; MUD, No. 0144 at p. 2; Nortek, No. 0137 at p. 4; SGA, No. 0145 at p. 1; Energy Association of Pennsylvania, No. 0146 at p. 12; ONE Gas, No. 0102 at p. 2; MUD, No. 0144 at p. 41) Many stakeholders stated that the proposed rule would hurt the very people who can least afford additional costs. (Corbin, No. 0066 at p. 1; Rockford, No. 0070 at p. 1; Chambersburg, No. 0084 at p. 1; Sylvania, No. 0085 at p. 1; Louisville, No. 0087 at p. 1; Monroe, No. 0088 at p. 1; Cairo, No. 0089 at p. 1; Jointly Owned Natural Gas, No. 0090 at p. 1; Adairsville, No. 0091 at p. 1; Camilla, No. 0092 at p. 1; Sugar Hill, No. 0093 at p. 1; Covington, No. 0096 at p. 1; Austell, No. 0097 at p. 1; Fitzgerald, No. 0100 at p. 1; Cartersville, No. 0101 at p. 1; Commerce, No. 0103 at p. 1; Thomasville, No. 0104 at p. 1; Toccoa, No. 0105 at p. 1; Tifton, No. 0114 at p. 1; Moultrie; No. 0121 at p. 1; Carrier, No. 0116 at p. 37) APGA and, AGA, and NAHB stated that the proposed NWGF standard is too burdensome on low-income consumers to be economically justified. (APGA, No. 0034 at p. 6; AGA, No. 0036 at p. 3; AGA, No. 0118 at pp. 27–28; NAHB, No. 0124 at p. 5)

AGA, the U.S. Joint Representatives, CenterPoint Energy, Energy Association of Pennsylvania, SoCalGas, NiSource, CA, Indiana, and A Ware stated that a condensing standard would place an undue burden on low-income consumers, especially in the South, who will be faced with the difficult choice of having to replace their non-condensing furnace with either a condensing furnace with higher installation costs or an electric space heating appliance with higher monthly energy bills. (AGA, No. 0036 at p. 3; U.S. Joint Representatives, No. 0067 at p. 1; CenterPoint Energy, No. 0083 at p. 3; Energy Association of Pennsylvania, No. 0146 at pp. 1–2; SoCalGas, No. 0132–2 at p. 4; SoCalGas, No. 0132–6 at p. 8; NiSource, No. 0127 at pp. 8–9; Contractor Advisors, No. 0061 at p. 1; Indiana, No. 0094 at p. 1; A Ware, No. 0204 at p. 1) Vectren stated that a large percentage of its customers, who fall within Federal poverty guidelines, would be negatively impacted by the proposed furnace rule. (Vectren, No. 0111 at p. 5)

AGL Resources, SoCalGas, and Nortek stated that the rule would disproportionally affect low- and fixed-income consumers. AGL Resources and SoCalGas stated that because low- and fixed-income homeowners typically live in smaller spaces that require less energy to heat, the reduced fuel costs from a 92-percent AFUE furnace would never be enough to offset the total installed cost of a condensing furnace. AGL Resources stated that the overwhelming majority of low- and fixed-income homeowners would receive neutral or negative paybacks when they install a new condensing furnace. (AGL Resources, No. 0039 at p. 4; AGL Resources, No. 0112 at p. 8; SoCalGas, No. 0132–2 at p. 3; SoCalGas, No. 0132–6 at p. 8; Nortek, No. 0137 at pp. 3–4)

AABE, Payne, Bishop, Meeks, and Nortek stated that many low-income homeowners have less access to capital, and consequently, they do not have the equity or cash savings to afford the significant upfront costs of a condensing NWGF. Payne and Bishop stated that while it is true that low-income consumers would save money in the long run by switching to a condensing furnace, many low-income families do not have the financial flexibility to make decisions based on life-cycle-costs. (AABE, No. 0155 at p. 1; AABE, No. 0197 at p. 1; Payne, No. 0075 at p. 1; Bishop, No. 0076 at p. 12; Meeks, No. 0140 at p. 1; Nortek, No. 0137 at pp. 3–4) MHI stated that low-income homeowners have limited access to credit to finance a new furnace, creating additional hardships. (MHI, No. 0129 at p. 2) AABE stated that because over 50 percent of low-income gas households are owner-occupied, it is important that the rulemaking process acknowledge the social, financial, and economic implications on low-income communities of retrofitting gas furnaces. (AABE, No. 0155 at p. 1; AABE, No. 0197 at p. 1)

On the other hand, the Joint Congress Members, CEC, the Joint Consumer Commenters, PG&E, NEEP, and ASAP stated that furnace efficiency standards are beneficial for low-income consumers because heating bills represent such a large portion of their monthly bills and income. (Joint Congress Members, No. 0161 at p. 23; Joint Consumer Commenters, No. 0123 at p. 13; PG&E, No. 0153 at pp. 11–12; NEEP, No. 0150 at p. CEC, No. 120 at p. 5; ASAP, No. 0154 at p. 6) NEEP stated that roughly 75 percent of low-income consumers would receive net benefits from the proposed standards. (NEEP, No. 0150 at p. 3)

Many stakeholders are concerned that landlords would avoid the high costs of installing a condensing natural gas furnace by installing a system less expensive to install but more expensive to operate, with the operating costs being left in the hands of the tenant. (A Ware, No. 0045 at p. 1; PGW, No. 0003–1 at p. 3; PWG, No. 0003–2 at pp. 4–6; AAEA, No. 0056 at p. 2; Ubuntu, No. 0057 at p. 1; DC Jobs or Else, No. 0059 at p. 1; Corbin, No. 0066 at p. 1; Lawrenceville, No. 0074 at p. 1; Payne, No. 0075 at p. 1; Bishop, No. 0076 at p. 1; Gas Authority, No. 0086 at p. 6; Vectren, No. 0111 at p. 6; NiSource, No. 0127 at p. 5; AGL Resources, No. 0112 at p. 8; AGL Resources, No. 0039 at p. 5; SoCalGas, No. 0132–2 at pp. 3–4; SoCalGas, No. 0132–6 at p. 8; Ubuntu, No. 0191 at p. 1; A Ware, No. 0204 at p. 1) NMHC, NAA, and NLHA stated that for properties that replace gas furnaces with electric furnaces, there would likely be an increase in operating cost for consumers. (NMHC, NAA, and NLHA, No. 0117 at p. 4)

NMHC, NAA, and NLHA stated that unplanned retrofits would likely require property owners to raise their rents. (NMHC, NAA, and NLHA, No. 0117 at p. 1) NEUAC, AGL Resources, SoCalGas, and MUD stated that landlords often pass along infrastructure costs to their tenants in higher rents. (NEUAC, No. 0095 at pp. 1–2; AGL Resources, No. 0039 at pp. 5, 8; SoCalGas, No. 0132–2 at pp. 3–4; SoCalGas, No. 0132–6 at p. 8; MUD, No. 0144 at p. 2) NAHB stated that increases in energy efficiency will not be free to renters, because if landlords cannot get an adequate return on their investment, they will leave the market, thereby decreasing supply and increasing rents. (NAHB, No. 0050 at pp. 24–25) However, PG&E stated that replacement of equipment is part of normal repair and maintenance of a property and is built into the landlord's cost structure, so rents do not necessarily increase because a furnace is replaced. (PG&E, No. 0153 at pp. 11–12)

Several stakeholders pointed to positive impacts of the proposed standards on low-income renters. The Joint Congress Members, Joint Consumer Commenters, PG&E, NEEP, and CEC, and ASAP stated that many low-income consumers are renters who are responsible for monthly energy bills, but do not choose their heating equipment. They stated that a strong national energy efficiency standard would address the split incentive situation, protecting these consumers from having to pay higher bills to heat their homes. (Joint Congress Members, No. 0161 at p. 23; Joint Consumer Commenters, No. 0123 at pp. 26–27; PG&E, No. 0153 at pp. 11–12; NEEP, No. 0150 at p. 3; CEC, No. 0120 at pp. 5–6; ASAP, No. 0154–1 at p. 6) ACEEE stated that the majority of low-income households are renters, so in many cases, the capital costs will be borne by the owners. ACEEE stated that because DOE's analysis implicitly assumes that the full cost of furnace efficiency improvements are passed on in rent increases, the LCC analysis underestimates the LCC savings for such low-income consumers. (ACEEE, No. 0113 at p. 8) PG&E stated that utility subsidies are given to low-income customers, who are predominantly renters, to cover gas and electricity consumption. PG&E stated that a condensing furnace would reduce the gas consumption of low-income consumers, thereby allowing the subsidy to cover a large portion of the heating season gas costs. (PG&E, No. 0153 at p. 12)

c. Product Switching Due to the Proposed Standards

Many stakeholders expressed concern that the proposed standards would cause product switching from gas furnaces to less-efficient heating alternatives, which are less expensive to install but more costly to operate, because consumers would not be able to afford the initial purchase and installation cost of a condensing furnace, the installation of a condensing furnace may be impossible, or consumers would not realize sufficient savings. (Contractor Advisors, No. 0061 at p. 1; Corbin, No. 0066 at p. 1; U.S. Joint Representatives, No. 0067 at p. 1; Lawrenceville, No. 0074 at p. 1; PGW, No. 0122 at p. 3; Liberty Utilities, No. 0109 at p. 1; Goodman, No. 0135 at p. 1; Laclede, No. 0141 at pp. 3, 6; Anonymous, No. 0060 at p. 1; AEA, No. 0069 at p. 1; Meyers, No. 0072 at p. 1; Chambersburg, No. 0084 at p. 1; Gas Authority, No. 0086 at pp. 4–5; NPGA, No. 0130 at pp. 4–5; PCCBI, No. 0082 at p. 1; Carrier, No. 0116 at p. 10; Nortek, No. 0137 at pp. 2–3; NGA, No. 0110 at p. 1; SoCalGas, No. 0132–2 at pp. 2–3; SoCalGas, No. 0132–6 at p. 9; SoCalGas, No. 0132–7 at p. 2; NMHC, NAA, and NLHA, No. 0117 at p. 4; Washington Gas, No. 0133 at p. 2; NiSource, No. 0127 at pp. 4–5; Ingersoll Rand, No. 0203 at p. 2) Specifically, many stakeholders expressed concern that due to physical limitations, building code issues, or prohibitively high costs, the venting and condensate withdrawal requirements of condensing furnaces would be impossible or impractical to accommodate in some buildings, such as rowhouses, older buildings, and multi-family housing, and could force consumers to switch to alternative space heating systems. (PGW, No. 0003–2 at p. 3; Kleinman Center, No. 0053 at p. 1; AAEA, No. 0056 at pp. 1–2; Corbin, No. 0066 at p. 1; Lawrenceville, No. 0074 at p. 1; Pennsylvania Department of Environmental Protection, No. 0099 at p. 1; AGL Resources, No. 0112 at pp. 11–12; NMHC, NAA, and NLHA, No. 0117 at pp. 2, 3; NiSource, No. 0127 at p. 5; Washington Gas, No. 0133 at p. 2; Rheem, No. 0142 at p. 8; MHI, No. 0129 at p. 1)

APGA stated that the high levels of fuel switching reported in the NOPR render the proposed standard unacceptable. (APGA, No. 0034 at p. 5) The U.S. Joint Representatives, Lawrenceville, Nortek, and AAEA are concerned that product switching caused by the proposed rule would financially burden consumers and ultimately undermine the efficiency goals that underlie the Energy Policy and Conservation Act. (U.S. Joint Representatives, No. 0067 at p. 1; Lawrenceville, No. 0074 at p. 1; Nortek, No. 0137 at pp. 2–3–4; AAEA, No. 0056 at pp. 1–2) ONE Gas, NiSource, Vectren, Dublin, Gas Authority, and Lawrenceville stated that an efficiency standard that encourages consumers to switch from natural gas to electricity would not improve overall efficiency and would be bad economic and environmental policy. (ONE Gas, No. 0102 at p. 2; NiSource, No. 0127 at p. 6; Vectren, No. 0111 at p. 2; Dublin, No. 0071 at p. 1; Gas Authority, No. 0086 at pp. 6–7; Lawrenceville, No. 0074 at p. 1) JCI stated that given the life of furnaces, the lost energy savings, increased emissions, and costs for consumers become a significant number over a 20-year lifetime for each household that switches fuel. (JCI, No. 0148 at p. 7)

Many stakeholders expressed concern that low-income and/or senior-only households would be unable to afford the higher up-front costs for a condensing furnace and would switch to alternative space heating products that are cheaper to install but have higher operating costs. (AGA, No. 0036 at p. 3; U.S. Joint Representatives, No. 0067 at p. 1; CenterPoint Energy, No. 0083 at p. 3; Energy Association of Pennsylvania, No. 0146 at pp. 1–2; SoCalGas, No. 0132–2 at p. 4; SoCalGas, No. 0132–6 at p. 8; A Ware, No. 0045 at p. 1; AAEA, No. 0056 at p. 1; Ubuntu, No. 0057 at p. 1; DC Jobs or Else, No. 0059 at p. 1; Contractor Advisors, No. 0061 at p. 1; Rockford, No. 0070 at p. 1; Dublin, No. 0071 at p. 1; Chambersburg, No. 0084 at p. 1; Sylvania, No. 0085 at p. 1; Louisville, No. 0087 at p. 1; Monroe, No. 0088 at p. 1; Cairo, No. 0089 at p. 1; Jointly Owned Natural Gas, No. 0090 at p. 1; Adairsville, No. 0091 at p. 1; Sugar Hill, No. 0093 at p. 1; Camilla, No. 0092 at p. 1; Covington, No. 0096 at p. 1; Austell, No. 0097 at p. 1; Fitzgerald, No. 0100 at p. 1; Cartersville, No. 0101 at p. 1; Commerce, No. 0103 at p. 1; Thomasville, No. 0104 at p. 1; Toccoa, No. 0105 at p. 1; NGA, No. 0110 at p. 1; Tifton, No. 0114 at p. 1; Moultrie,; No. 0121 at p. 1; A Ware, No. 02054 at p. 1; Payne, No. 0075 at p. 1; Bishop, No. 0076 at p. 1; Meeks, No. 0140 at p. 1; NJNG, No. 0119 AT P. 2; Pennsylvania Department of Environmental Protection, No. 0099 at p. 1; PGW, No. 0003–1 at p. 3; PGW, No. 0003–2 at pp. 2–6; PGW, No. 0122 at p. 2; Gas Authority, No. 0086 at pp. 5–6; NGA, No. 0110 at p. 1; DC Jobs or Else, No. 0059 at p. 1; Pennsylvania Department of Environmental

Protection, No. 0099 at p. 1) NPGA stated that consumers in the South and low-income consumers would be more likely to switch fuels based on the high total installed cost of a condensing furnace combined with their less frequent reliance on heating appliances. (NPGA, No. 0171 at pp. 1–2) NPGA also stated that consumers who switch from a propane furnace to another product would have less incentive to maintain a propane storage tank to supply appliances that utilize a smaller amount of fuel, thus encouraging switching to all electric appliances (*e.g.,* water heater or stove). (NPGA, No. 0130 at p. 5; NPGA, No. 0171 at pp. 1–2; NPGA, No. 0200 at pp. 2–3) Gas Authority stated that consumers would likely fuel switch to avoid the high cost of a condensing furnace, especially given the generous incentives for installing heat pumps offered by electric utilities. (Gas Authority, No. 0086 at pp. 6–7)

CenterPoint Energy stated that fuel switching from natural gas to electric space heating would create a net cost for consumers and increase energy use. (CenterPoint Energy, No. 0083 at pp. 2–3) Questar Gas stated that because condensing furnaces are not economically justified in the new single-family home market, especially in areas with limited need for heating, home builders may choose electric space heating options that significantly lower FFC energy efficiency and increase operating costs. (Questar Gas, No. 0151 at p. 1)

Many stakeholders stated that the proposed standards would cause switching to electric or oil-fired space heating equipment that would increase harmful emissions. (AGL Resources, No. 0039 at p. 3; DC Jobs or Else, No. 0059 at p. 1; Dublin, No. 0071 at p. 1; AGA, No. 0036 at p. 3; AGA, No. 0118 at pp. 3, 5–6, 29; Rockford, No. 0070 at p. 1; Chambersburg, No. 0084 at p. 1; Sylvania, No. 0085 at p. 1; Louisville, No. 0087 at p. 1; Monroe, No. 0088 at p. 1; Cairo, No. 0089 at p. 1; Jointly Owned Natural Gas, No. 0090 at p. 1; Adairsville, No. 0091 at p. 1; Sugarhill, No. 0093 at p. 1; Camilla, No. 0092 at p. 1; Covington, No. 0096 at p. 1; Austell, No. 0097 at p. 1; Fitzgerald, No. 0100 at p. 1; Cartersville, No. 0101 at p. 1; Commerce, No. 0103 at p. 1; Thomasville, No. 0104 at p. 1; Toccoa, No. 0105 at p. 1; NGA, No. 0110 at p. 1; Tifton, No. 0114 at p. 1; Moultrie; No. 0121 at p. 1; Vectren, No. 0111 at p. 2; PGW, No. 0003–2 at p. 5; CenterPoint Energy, No. 0083 at pp. 2–3; Lawrenceville, No. 0074 at p. 1; NPGA, No. 0130 at p. 6; AGL Resources, No. 0112 at pp. 5–6; Carrier, No. 0116 at p. 10; NMHC, NAA, and NLHA, No. 0117 at p. 4; Laclede, No. 0141 at p. 6; Questar Gas, No. 0151 at p. 1; AAEA, No. 0056 at pp. 1–2; Questar Gas, No. 0151 at p. 1; Corbin, No. 0066 at p. 1; A Ware, No. 0204 at p. 1; Liberty Utilities, No. 0109 at p. 1) Laclede stated that emissions benefits are likely not to materialize due to fuel switching to electric space heaters and water heaters. (Laclede, No. 0141 at p. 23) In contrast, EEI stated that due to flaws in the product switching analysis, the emissions impacts of increased use of electricity for home heating are overestimated. (EEI, No. 0179 at p. 4)

The Joint Congress Members stated that while product switching may occur in a small number of situations, such as new construction in the South where air conditioning is a higher priority than heating, it is unrealistic for other parts of the country or for existing residences because the cost of fuel switching would likely be much greater for installation and operation than the incremental costs of installing a condensing furnace. The Joint Congress Members stated that the most likely alternative choice, a heat pump, is not as cost-competitive or as effective as a gas furnace for most housing in regions with sustained cold weather. (Joint Congress Members, No. 0161 at p. 3)

d. Summary Response to Comments on the Economic Justification of the March 2015 NOPR Proposed Standards for Non-Weatherized Gas Furnaces

The Department appreciates the stakeholder comments with regard to the proposed standards for NWGFs. As discussed in section II.B.2, a number of parties suggested that DOE should create a separate product class for NWGFs based on certified input capacity and set lower standards for that product class in order to mitigate some of the negative impacts of the proposed standards, and in particular, the impact of fuel switching. The September 2015 NODA evaluated the impacts of adopting separate standards for product classes based on certified input capacity. Subsequent refinement of that analysis, along with comments on the September 2015 NODA, formed the basis for selecting the standards proposed in this document. The results of the SNOPR analysis, and the reasons why DOE has tentatively determined that the currently-proposed standards are economically justified, are presented in section V of this document.

DOE believes that the standards for NWGFs proposed in this SNOPR address many of the concerns raised in the March 2015 NOPR comments described in sections III.F.1.a through III.F.1.c. Because replacement of a non-condensing NWGF with a condensing NWGF would not be necessary in many of the buildings where their installation poses challenges or would entail considerable cost, the currently-proposed standards significantly reduce the number of consumers expected to experience negative impacts or to switch to electric heating, compared with a standard at 92-percent AFUE for all NWGFs.

e. Economic Justification of the March 2015 NOPR Proposed Standards for Mobile Home Gas Furnaces

AHRI and JCI expressed concern that MHGF consumers would be negatively affected or would switch fuels for heating if an amended minimum efficiency standard of 92-percent were adopted. (AHRI, No. 0195 at p. 1; JCI, No. 0202 at pp. 2–4) MHI and Mortex commented that the proposed rule would be particularly burdensome to many of the 22 million Americans residing in mobile homes, which primarily house low- and moderate-income families. (MHI, No. 0129 at p. 2; Mortex, No. 0157 at pp. 2–3) MHI and Nortek commented that mobile home buyers are particularly sensitive to price increases because of their limited incomes and limited access to credit. (MHI, No. 0129 at p. 2; Nortek, No. 0137 at pp. 4–5)

The results presented in section V.B.1 indicate that under the proposed standard of 92-percent AFUE for MHGFs, 63 percent of MHGF consumers would see a net benefit, and only 8 percent would see a net cost. DOE believes that there would be minimal switching away from MHGFs for several reasons. First, for new mobile homes, the type of heating equipment is determined more by the intended location of the home, the expected heating load, and availability of a gas supply. For replacement applications, switching away from gas is not likely because the cost increase for installing a condensing furnace relative to a non-condensing furnace is not a significant factor due to the much simpler venting system compared to installation of a NWGF.

MHI and Nortek stated that the proposed energy conservation standards for manufactured housing developed by DOE's Appliance Standards Rulemaking Advisory Committee (ASRAC) Working Group on Manufactured Housing will likely increase the cost a new single-section mobile home by an average of $1,734. MHI and Nortek stated that adding an additional cost for a condensing furnace and an upgraded furnace fan could mean that more than one million households would be unable to afford an average-priced single-section mobile home. (MHI, No. 0129 at p. 2; Nortek, No. 0137 at pp. 4–5)

In response, DOE notes that the expected average cost of a condensing furnace in a new mobile home is comparable to a non-condensing furnace because the increase in the price of the product is offset by a lower installation cost for a condensing furnace for most installations.[20] New furnaces installed in mobile homes must be approved by the U.S. Department of Housing and Urban Development, which requires special sealed combustion (direct vent) for all non-condensing and condensing installations of manufactured home furnaces. (24 CFR 3280.709(d)(1)) For condensing installations, the PVC piping is usually less expensive than the metal vent system used for non-condensing furnaces. Thus, there is not likely to be any effect on the affordability of single-section mobile homes due to the proposed MHGF standard.

2. Safety Concerns Regarding the Proposed Standards

Several stakeholders raised potential safety concerns related to condensing furnace installations. CenterPoint Energy and NMHC, NAA, and NLHA stated that in the case of replacement with a condensing furnace, changes in the volume of gas being vented due to orphaning the water heater would affect the draw of the venting system, and could result in toxic combustion gases being drawn back into the building.[21] NMHC, NAA, and NLHA stated that it is foreseeable that local building inspectors would have concerns about the adequacies of the draw of a vent when it is carrying a reduced volume of gases. (CenterPoint Energy, No. 0083 at p. 23; NMHC, NAA, and NLHA, No. 0117 at pp. 3–4) MUD stated that many contractors fail to inform consumers that an orphaned water heater may require resizing existing vent stacks or installing chimney liners, resulting in the vent stacks of consumers who elect not to make those changes eventually being degraded. (MUD, No. 0144 at p. 2)

As discussed in section IV.F.2, DOE's analysis accounts for resizing existing vent stacks or installing chimney liners in the case of an orphaned water heater. DOE has concluded that the National Fuel Gas Code (NFGC) provides adequate guidance for installers regarding vent sizing to ensure that the venting system is safe when a condensing furnace is installed.[22] DOE notes that AHRI has previously stated that from 2000 to 2010, there were about 7.5 million replacement installations of condensing NWGFs, some of which must have resulted in orphaned gas water heaters. (Docket No. EERE–2011–BT–STD–0011, AHRI, No. 0046 at p. 4) However, there is no evidence from the field over that time that consumers incurred a higher safety risk because they chose to not address the water heater's venting system when the new condensing furnace was installed.

The Pennsylvania Department of Environmental Protection, Carrier, PGW, Gas Authority, Nayes, and AGL Resources stated that due to the difficulty and expense of installing a condensing furnace, many homeowners will probably choose to repair rather than replace their failing furnace, or they might turn to an unlicensed contractor, thereby jeopardizing safety by not following the minimum fuel gas code requirements. (Pennsylvania Department of Environmental Protection, No. 0099 at p. 2; Carrier, No. 0116 at pp. 8, 20; PGW, No. 0122 at p. 3; Gas Authority, No. 0086 at pp. 4–5; Nayes, No. 0055 at p. 1; AGL Resources, No. 0112 at p. 7) PGW stated that repairing existing products long after the point when they should be replaced has serious potential safety ramifications related to gas leaks for consumers, neighbors, and utility employees. (PGW, No. 0003–2 at pp. 5–6) AGL Resources, PGW, and MUD stated that trying to extend the life of a worn-out product is dangerous, and can lead to fires or carbon monoxide (CO) poisoning. (AGL Resources, No. 0112 at pp. 6–7; PGW, No. 0122 at p. 3; MUD, No. 0144 at p. 2)

In response, DOE has tentatively concluded that the vast majority of furnace consumers will make efforts to ensure that furnace repairs are done properly, despite certain commenters' speculation to the contrary. DOE notes that establishing a minimum efficiency standard that requires a condensing design does not alter the existing situation regarding the fraction of consumers who do not repair faulty equipment. Regarding extended repair of a furnace, DOE notes that AHRI previously stated that establishing a minimum condensing standard for NWGFs would not alter the situation regarding consumers who do not repair faulty equipment or who perform unsafe home repairs. AHRI also stated that service technicians must alert the consumer when they determine that the appliance is unsafe, and utility service technicians are obligated to turn off the gas to an unsafe appliance. (Docket No. EERE–2011–BT–STD–0011, AHRI, No. 0046 at pp. 4–5) Thus, consumers' own safety incentives and these additional safeguards would be expected to ensure proper furnace operation, maintenance, and repair.

Rheem believes that the conversion of a non-condensing furnace to a condensing furnace has significant safety implications that may not be addressed in a no-heat emergency. (Rheem, No. 0142 at pp. 1–2; Rheem, No. 0184 at pp. 1, 2–3; Rheem, No. 0199 at pp. 1, 2–3) Carrier stated that in some cases, it is impossible to install a condensing furnace due to physical constraints, and forcing homeowners into these situations could lead to dangerous complications arising from life-threatening no-heat situations. (Carrier, No. 0116 at pp. 8, 20)

In response, DOE has tentatively concluded that the provisions of the NFGC and manufacturers provide adequate guidance for installers to ensure that the condensing furnace is installed safely, and the vast majority of contractors understand that they are liable for safety problems. DOE's analysis accounts for situations where extreme difficulties in installing a condensing furnace could lead to significant installation costs or switching to electric furnaces or heat pumps to maintain adequate indoor space heating.

PGW, AGL Resources, NiSource, and Carrier stated that many consumers, particularly low-income consumers, may choose to rely on electric space heaters or other supplemental heating sources, which puts them at increased risk of fire, especially with older electric space heaters. (PGW, No. 0122 at p. 3; AGL Resources, No. 0112 at p. 7; NiSource, No. 0127 at pp. 8–9; Carrier, No. 0116 at pp. 8, 20) Jointly Owned Natural Gas and Adairsville areis concerned that consumers may choose an inferior source of heat that may not be intended or safe for homes. (Jointly Owned Natural Gas, No. 0090 at p. 1; Adairsville, No. 0091 at p. 1)

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[20] The standard for MHGF furnace fans requires technology (improved PSC motor) that entails a slight price increase ($11) in 2013$ compared to the baseline PSC motor (see furnace fan energy conservation standards final rule; available at: *https://www.regulations.gov/#!documentDetail;D=EERE-2010-BT-STD-0011-0117*). This cost is applicable to less than 50 percent of installations because the rest of the market is already comprised of MHGFs with improved PSC motors or motors with higher efficiencies.

[21] The venting systems for commonly vented non-condensing NWGFs and gas water heaters that are atmospherically vented rely on a certain volume of air to operate properly. When a water heater is orphaned, the volume of air being vented is reduced.

[22] National Fire Protection Association and American Gas Association. *National Fuel Gas Code.* 2015. (Last accessed April 20, 2016.) available at: *www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=54.*

DOE believes that it is speculative to assume that the currently-proposed standards would lead to greater use of unsafe electric space heaters or other supplemental heating sources. Unsafe use of electric space heaters may occur with or without the proposed standards. There is no evidence to indicate that the proposed standards would lead to switching of this kind.

AGL Resources stated that because DOE is effectively forcing homeowners to install heat tape in a large percentage of U.S. homes, it can be assumed that the number of heat tape-related fires, injuries, and deaths will increase proportionally. AGL Resources stated that according to data published by the National Fire Protection Association in 2013, on average, heat tape causes 350 fires per year, leads to around seven injuries per year, accounts for $9.4 million in property damage per year, and causes about two deaths per year. (AGL Resources, No. 0112 at pp. 6–7)

DOE notes that like other appliances, heat tape requires proper installation, maintenance, and replacement to operate safely. In addition, DOE believes that once condensing furnace become more common, contractors will become better trained and more aware of potential issues, thereby reducing the impacts of heat tape or using other options that protect the condensate pipe from exposure to freezing environments.

3. Standby Mode and Off Mode Standards

DOE received comments on the standby mode and off mode standards proposed for NWGFs and MHGFS in the NOPR. In response to the March 2015 NOPR, APPA and EEI commented on DOE's proposed standby mode and off mode standards. The commenters stated that DOE should select TSL 1 for the standby mode and off mode standards because of the low PBP, LCC, and percentage of consumers experiencing net cost compared to the other TSLs. (APPA, No. 0149 at p. 1; EEI, No. 0160 at pp. 14–15) In response, DOE notes that only a small percentage of consumers experience a net cost under the proposed standby mode and off mode standards, and the national benefits and emission reductions are significantly greater for TSL 3 than TSL 1. Therefore, DOE continues to propose TSL 3 as the standard level for standby mode and off mode.

For NWGFs (including MHGFs), for which this notice proposes new standby mode and off mode standards (see section V.C.2), DOE is proposing to revise the regulatory text governing certification reports in 10 CFR 429.18. The proposed revisions would specify that on and after the compliance dates for the standby mode and off mode standards, reporting of these values would be required.

In this SNOPR, DOE is also proposing to clarify the regulations governing the certification and reporting requirements for non-weatherized oil furnaces (including mobile home oil furnaces) and electric furnaces. For non-weatherized oil furnaces (including mobile home oil furnaces) and electric furnaces, compliance with standby mode and off mode energy conservation standards was required starting May 1, 2013. (10 CFR 430.32(e)(1)(iii)) Each manufacturer, before distributing in commerce any basic model of a covered product subject to an applicable energy conservation standard set forth in parts 430 must submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s). (10 CFR 429.12(a)) Certification reports for these product classes on or after May 1, 2013 must include standby mode and off mode electrical power consumption in order to certify compliance with those standards. DOE proposes to clarify in its certification regulations at 10 CFR 429.18(b)(2)(i) that certification reports for non-weatherized oil furnaces (including mobile home oil furnaces) and electric furnaces must include representative values for standby mode and off mode electrical power consumption.

Additionally, DOE proposes to specify rounding requirements in 10 CFR 429.18(a)(2)(vii) for the representative value of standby mode and off mode electrical power consumption. Specifically, DOE proposes that these values be rounded up to the next tenth of one watt.

4. Rulemaking Process

CenterPoint Energy, NiSource, Meeks, and Laclede urged DOE to work with all stakeholders to develop a natural gas furnace standard that will address stakeholder concerns and will reduce energy use without incentivizing fuel switching. (CenterPoint Energy, No. 0083 at p. 5; NiSource, No. 0127 at p. 10; Meeks, No. 0140 at p. 2; Laclede, No. 0141 at pp. 7–8) AABE argued that DOE should suspend the current rulemaking and start with a new proposal that includes all stakeholders, including those most harmed by the proposal, such as African-American, minority, and low-income communities, and acknowledges the social, financial, and economic implications on low-income families when retrofitting natural gas furnaces. AABE is concerned about the lack of transparency and engagement of all stakeholders in earlier proceedings. (AABE, No. 0197 at pp. 1–2)

In response, DOE conducts all appliance standards rulemakings through the public notice-and-comment process, in which all members of the public are given the opportunity to comment on the rulemaking. DOE provided a longer than normal comment period on the March 2015 NOPR, and it subsequently extended the comment period on both the March 2015 NOPR and the September 2015 NODA at stakeholder request. As part of this rulemaking, DOE also hosted a number of public meetings, including one focused on its analytical models, in order to increase the transparency of its process. In addition, all documents are publicly available at *www.regulations.gov*. In sum, all proceedings involved in this rulemaking have been open to all members of the interested public.

APGA objected that DOE declined to respond to the joint request from AGA and APGA submitted on September 15, 2015 (before the initial October 14, 2015 deadline to submit comments) for DOE to extend the September 2015 NODA comment period. (AGA, No. 0194 at p. 2; APGA, No. 0193 at p. 2) AGA inquired why a response to their request for more data in response to the NODA or a notice of extension of the NODA comment period was delayed beyond the initial October 14, 2015 comment period close date. AGA noted that multiple stakeholders in favor of DOE's analytical position did not submit comments by the October 14, 2015 date, and inquired if anyone at DOE communicated to these stakeholders that there would be a comment period extension. (AGA, No. 0205 at pp. 1–2) In its comments, Laclede shares the concerns raised by AGA regarding the extension of the comment period that seems designed to provide a substantial advantage to those who support a separate product class for small furnaces. (Laclede, No. 0198 at p. 3)

In response, DOE carefully considered and ultimately granted the request contained in AGA and APGA's September 15, 2015 letter to re-open and extend the comment period, as well as to answer a number of technical questions. (AGA and APGA, No. 0168 at p. 1) On October 15, 2015, DOE published both a document responding to technical questions and a notice re-opening and extending the comment period. In a subsequent October 22, 2015 letter, APGA asserted that certain parties participating in the rulemaking did not submit comments by the original deadline "because they were aware that DOE would be re-opening the comment period.'' (APGA, No. 0193 at p. 4) DOE cannot speak to the decision-making of other parties participating in the rulemaking. But, as a matter of general practice and policy, DOE does not disclose its deliberative process, including whether a request to re-open a comment period will be granted, and DOE is not aware of any deviation from that policy with respect to the re-opening and extension of the comment period here. DOE is committed to a fair and open rulemaking process, so any characterization of DOE's actions as intended to ''tilt the playing field'' is simply not correct.

AHRI encouraged DOE to consider other ways to promote energy conservation and the use of efficient products because there will be regions where condensing furnaces will never be economically attractive or practical. AHRI stated that energy use can be reduced through changing consumer behavior and other factors, which would more likely reduce heating fuel consumption at lower cost and with fewer negative impacts than an efficiency standard. (AHRI, No. 0159 at pp. 69–70) The Mercatus Center and Laclede stated that DOE did not consider the alternatives to regulation. (Mercatus Center, No. 0079 at p. 2; Laclede, No. 0141 at p. 20)

Contrary to these commenters' views, DOE did evaluate non-regulatory alternatives to energy conservation standards, as described in chapter 17 of the NOPR TSD and the SNOPR TSD. However, DOE determined that none of the non-regulatory alternatives would save as much energy as the proposed standards. Furthermore, DOE does not have discretion under the statute to substitute energy conservation standards that are economically justified with other policies.

Laclede stated that because average consumers do not use an LCC analysis, DOE should use simple paybacks instead of LCC savings. Laclede stated that the ''rebuttable presumption'' of a 3-year simple payback is a much more reasonable criterion to use for the general public. (Laclede, No. 0141 at p. 18) DOE's use of LCC analysis is responsive to the EPCA mandate to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, initial charges for, or maintenance expenses of the covered products which are likely to result from the imposition of a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II))

5. Compliance Date

AGA, Vectren, and APGA stated that section 325(f)(4) of EPCA provides a schedule with 10 years between the compliance dates of the first and second required furnace rulemakings. Compliance with DOE's first furnace standard amendment rulemaking was required in 2015. Those commenters stated that the compliance date for the second rulemaking should therefore be 2025. AGA stated that section 325(f)(4)(C) prescribes that DOE undertake a rulemaking between 1997 and 2006 (which it did not do), and that the period from the publication of the final rule to the compliance date was to be from 5 to 15 years. AGA stated that EPCA does not require that the compliance date be set 5 years from the final rule, and a separate provision of EPCA supports adoption of a 2025 compliance date. Laclede supported AGA and APGA's comments on a compliance date of 2025. (AGA, No. 0118 at pp. 42–43; Vectren, No. 0111 at p. 6; APGA, No. 0106 at pp. 9–11; Laclede, No. 0141 at p. 38)

As noted in the March 2015 NOPR, EPCA typically provides for compliance lead time, *i.e.,* the time between publication of amended energy conservation standards for a covered product and the date by which manufacturers must comply with the amended energy conservation standards for such product. 80 FR 13120, 13136 (March 12, 2015). When EPCA was enacted to include furnaces as a covered product, those dates were specified. (See *e.g.,* 42 U.S.C. 6295(f)(4)(B) and (C)). Specifically, EPCA provided a 1994 compliance date for a final rule due in 1992, a 2002 compliance date for a final rule due in 1994, and a 2012 compliance date for a final rule due between 1997 and 2007. By including these dates in the statute, Congress indicated a 2-year period between the rulemaking publication date and compliance date for the first round of amended residential furnace standards, an 8-year lead time for the second round of rulemaking, and a minimum of 5 years for the last round of amended residential furnace standards. *Id.* Even in situations where statutory deadlines have passed before a rulemaking could be fully completed, DOE has generally maintained these timeframes as a reflection of a congressional choice. However, Congress has also chosen to require DOE to re-examine existing standards and, if appropriate, to update those standards following specific time frames for both completion and compliance. *See* 42 U.S.C. 6295(m)(4). DOE also recognizes that there is a difference between compliance lead time (*i.e.,* the time between the publication of a final rule and the date compliance is required during which time manufacturers take steps to come into compliance) and rule spacing (*i.e.,* the time between new standards which imposes no requirement on manufacturers).

In the present case, DOE notes that the first remand agreement for residential furnaces (resulting from the Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008)) did not vacate the November 2007 Rule for furnaces and boilers. Therefore, DOE has concluded that the November 2007 final rule completed the first round of rulemaking for amended energy conservation standards for furnaces, thereby satisfying the requirements of 42 U.S.C. 6295(f)(4)(B). The June 2011 direct final rule (June 2011 DFR) satisfied the second round of rulemaking for amended energy conservation standards for furnaces; however, the settlement resulting from the APGA lawsuit (Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 011–1485 (D.C. Cir. filed Dec. 23, 2011) vacated the standards for NWGFs and MHGFs. As a result, the June 2011 DFR completed the second round of rulemaking for the furnace product classes for which that rule was not vacated, and the current rulemaking constitutes the second round of rulemaking for amended energy conservation standards for NWGFs and MHGFs, as required under 42 U.S.C. 6295(f)(4)(C).

Missed deadlines in the furnaces rulemaking history have resulted in ambiguity in terms of the applicable statutory compliance date. More specifically, the statute does not clearly specify an applicable compliance date for the furnaces rulemaking proceedings because the dates set forth in the statute are based on rulemakings that were to have been conducted earlier. For the reasons that follow, DOE does not agree with the commenters' interpretation of the relevant statutory language regarding setting the compliance date for this rulemaking.

These commenters contend that, in 42 U.S.C. 6295(f)(4)(B) and (C), Congress mandated a 10-year gap between the compliance dates for the latest two rounds of rulemaking for amended residential furnace standards (*i.e.,* applicable to products manufactured on or after January 1, 2002 and January 1, 2012, respectively). (42 U.S.C. 6295(f)(4)(B) and (C)). These dates were established by Congress in the National Appliance Energy Conservation Act of 1987, which also established separate product classes for small and large furnaces.[23] However, the statute did not specify that a 10-year gap is always required. Instead the statute linked specific compliance deadlines (2002 and 2012) to specific statutory deadlines for completion of rulemaking proceedings (1994 and 2007). DOE acknowledges that it missed the statutory deadlines for completion of these amended furnace standards rules (along with those of other products) and thus, also missed the statutory compliance dates. In light of those missed deadlines, Congress passed a requirement in the Energy Policy Act of 2005 that DOE submit a semi-annual report to Congress summarizing the reasons DOE did not comply with deadlines and providing a plan to expeditiously eliminate the rulemaking backlog.[24] Congress subsequently passed the Energy Independence and Security Act of 2007 (EISA 2007) to include the 6-year-lookback provision at 42 U.S.C. 6265(m).[25] In establishing this lookback requirement, Congress eliminated the previously-existing lookback requirement, which provided that "the last final rules required under subsections (b) through (i)" must be issued before 42 U.S.C. 6295(m) could apply." Thus, between 2005 and 2007, Congress recognized the need for DOE to quickly promulgate energy conservation rules that should have been issued years earlier and to review those rules regardless whether DOE had exhausted its product-specific rulemaking authority.

Congress enacted EISA 2007 subsequent to the promulgation of the November 2007 final rule fulfilling DOE's rulemaking obligation under 42 U.S.C. 6295(f)(4)(B) and subsequent to the date DOE was obligated to complete the rulemaking required in 42 U.S.C. 6295(f)(4)(C). As such, with knowledge of the missed deadlines for these required furnace rulemakings, Congress specifically mandated a lead time for furnaces rulemakings under 42 U.S.C. 6295(m)(4)(A)(ii) (*i.e.,* 5 years) and set a spacing requirement between rulemakings (*i.e.,* a minimum of 6 years since compliance with the last standards rule). This later-in-time enactment, with awareness of the missed deadlines in 42 U.S.C. 6295(f)(4)(B) and (C), demonstrates Congress's updated direction regarding the lead time and spacing *specifically* for furnaces rulemakings going forward. Given the ambiguity in the statutory provisions and Congress's desire to expedite the energy conservation standards rulemaking process, DOE interprets the more-recent-in-time provision, specifying a 5-year lead time for compliance, as the most appropriate indicator of congressional intent. Such interpretation is also consistent with EPCA's policy purposes "to conserve energy supplies through energy conservation programs" and "to provide for improved energy efficiency of . . . major appliances, and certain other consumer products." (42 U.S.C. 6201(4) and (5))

Consequently, DOE has tentatively decided to proceed with a lead time for compliance of 5 years after publication of the final rule for amended furnaces standards, consistent with the requirements of both 42 U.S.C. 6295(f)(4)(C) and (m)(4)(A)(ii). DOE notes that such lead time is the same lead time accorded to other furnace product classes in the June 27, 2011 DFR, thereby providing a level playing field for manufacturers of similar products. Regarding the spacing between rules, DOE will also ensure that any amended standards are not required with respect to furnaces within 6 years of the last time new standards were required (42 U.S.C. 6295(m)(4)(B)); as explained in the paragraphs which immediately follow, this 6-year limitation will also be met in the current rulemaking. For these reasons, in its analysis of amended energy conservation standards for NWGFs and MHGFs in this SNOPR, DOE is using a 5-year lead time between the expected publication of the final rule and the compliance date for the standard.

AGA, Vectren, Rheem, AHRI, and APGA stated that EPCA provides that new standards cannot be applied to a product if other new standards have been required during the prior 6 years. Amended furnace standards took effect in November 2015, and furnace fan standards take effect in 2019. Thus, these commenters argued that new proposed amendments to the furnace standards should not take effect until 2025, 6 years after the compliance date for the furnace fan rule. (AGA, No. 0118 at pp. 42–43; Vectren, No. 0111 at p. 6; Rheem, No. 0142 at p. 3; AHRI, No. 0159 at p. 3; APGA, No. 0106 at p. 11)

DOE disagrees with these commenters' interpretation of the relevant statutory provisions. The standards on furnace fans were responsive to the statutory directive that DOE "shall consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work." (42 U.S.C. 6295(f)(4)(D)) DOE published the final rule for "furnace fans"[26] in the **Federal Register** on July 3, 2014, with a compliance date of July 3, 2019. 79 FR 38130. DOE did not intend nor does it believe Congress intended that the furnace fan standards are to be understood as a standard on residential furnaces, but instead, DOE has interpreted that statutory provision as authority to set standards for a separate covered product. Consequently, the furnace fans rule is not the operative rule for purposes of determining the appropriate compliance date under the statute for NWGFs and MHGFs standards. As described above, under DOE's 6-year-lookback authority to review prior standards rules, manufacturers shall not be subject to new standards for a covered product for which other new standards have been required in the past 6 years. (42 U.S.C. 6295(m)(4)(B)) Therefore, the relevant date for the aforementioned 6-year window is November 2015, and the compliance date for newly-amended standards must be after November 19, 2021.

Accordingly, the relevant statutory timing requirements are in good alignment. The provision at 42 U.S.C. 6295(m)(4)(A)(ii) require a 5-year lead time for amended furnace standards, and given the publication date of this SNOPR combined with the public comment period, the final rule should be completed such that the compliance date would fall after November 19, 2021 (*i.e.,* a date fulfilling the 6-year gap required by 42 U.S.C. 6295(m)(4)(B)). DOE further notes that this lead time for NWGFs and MHGFs would be consistent with the 5 years of lead time provided under 42 U.S.C. 6295(f)(4)(C) to the other furnaces product classes for which standards were promulgated in the June 2011 DFR.

EEI stated that to act in a more fuel and market neutral manner, the new standards for NWGFs should take effect before or coincident with any new standards for heat pumps. (EEI, No. 0160 at p. 2) DOE notes that the compliance dates for energy conservation standards are specified by EPCA and tied to promulgation of the final rule. In any case, DOE expects that amended standards for central air conditioners and heat pumps will be issued later in 2016 with a compliance year of 2023 (about a year after the compliance year for residential furnaces).

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[23] Public Law 100–12 (enacted March 17, 1987).

[24] Section 141, Public Law 100–58 (enacted Aug. 8, 2005).

[25] Public Law 110–140 (enacted Dec. 19, 2007).

[26] Although in the furnace fan rulemaking DOE only covered those circulation fans that are used in furnaces and modular blowers, the EPCA language could be interpreted as encompassing electrically-powered devices used in any residential HVAC product to circulate air through duct work. If Congress had wanted to limit the regulation of fans to only furnaces, it could have provided narrowly-tailored language to that end, rather than the broader language it employed.

6. Regional Standards

As discussed in section II.A, EISA 2007 amended EPCA to allow for the establishment of a single more-restrictive regional standard in addition to the base national standard for furnaces. (42 U.S.C. 6295(o)(6)(B)) The regions must include only contiguous States (with the exception of Alaska and Hawaii, which can be included in regions with which they are not contiguous), and each State may be placed in only one region (*i.e.,* a State cannot be divided among or otherwise included in two regions). (42 U.S.C. 6295(o)(6)(C))

Further, EPCA mandates that a regional standard must produce significant energy savings in comparison to a single national standard, and provides that DOE must determine that the additional standards are economically justified and consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers. (42 U.S.C. 6295(o)(6)(D)) For this rulemaking, DOE has considered the above-delineated impacts of regional standards in addition to national standards.

Where appropriate, DOE has addressed the potential impacts from considered regional standards in the relevant analyses, including the mark-ups to determine product price, the LCC and payback period analysis, the national impact analysis (NIA), and the manufacturer impact analysis (MIA). DOE's approach for addressing regional standards is included in the methodology section corresponding to each individual analysis (see section IV of this notice), and in the SNOPR TSD, specifically Chapter 8 (LCC and PBP Analysis) and Chapter 10 (National Impact Analysis). For certain phases of the analysis, additional regional analysis is not required. For example, technologies for improving product efficiency generally do not vary by region, and thus, DOE did not perform any additional regional analysis for the technology assessment and screening analysis. Similarly, DOE did not examine the impacts of having two regions in the engineering analysis, since the technologies and manufacturer processes are the same under both a national and regional standard.

To evaluate regional standards for residential furnaces, DOE maintained the same regions analyzed in the March 2015 NOPR, which are shown in Table III.1 and Figure III.1. The allocation of individual States to the regions was largely based on whether a State's annual heating degree day (HDD)[27] average is above or below 5,000, which offers a rough threshold point at which space heating demands are significant enough to require longer operation of heating systems, thereby providing a basis for utilization of higher-efficiency systems.

TABLE III.1—NATIONAL STANDARD AND REGIONAL STANDARD (BY STATE) FOR ANALYSIS OF FURNACE STANDARDS

National standard *	Northern region standard
Alabama	Alaska
Arizona	Colorado
Arkansas	Connecticut
California	Idaho
Delaware	Illinois
District of Columbia	Indiana
Florida	Iowa
Georgia	Kansas
Hawaii	Maine
Kentucky	Massachusetts
Louisiana	Michigan
Maryland	Minnesota
Mississippi	Missouri
Nevada	Montana
New Mexico	Nebraska
North Carolina	New Hampshire
Oklahoma	New Jersey
South Carolina	New York
Tennessee	North Dakota
Texas	Ohio
Virginia	Oregon
	Pennsylvania
	Rhode Island
	South Dakota
	Utah
	Vermont
	Washington
	West Virginia
	Wisconsin
	Wyoming

* DOE analyzes an approach whereby the agency would set a base National standard, as well as a more-stringent standard in the Northern region. Because compliance with the regional standard would also meet the National standard, Table III.1 categorizes States in terms of the most stringent standard applicable to that State.

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[27] DOE used the population weighted state HDD as determined by the National Oceanic and Atmospheric Administration (NOAA) in its 1971–2000 United States Climate Normals report, available at *http://hurricane.ncdc.noaa.gov/climatenormals/hcs/HCS_51.pdf* (last accessed July 28, 2014).

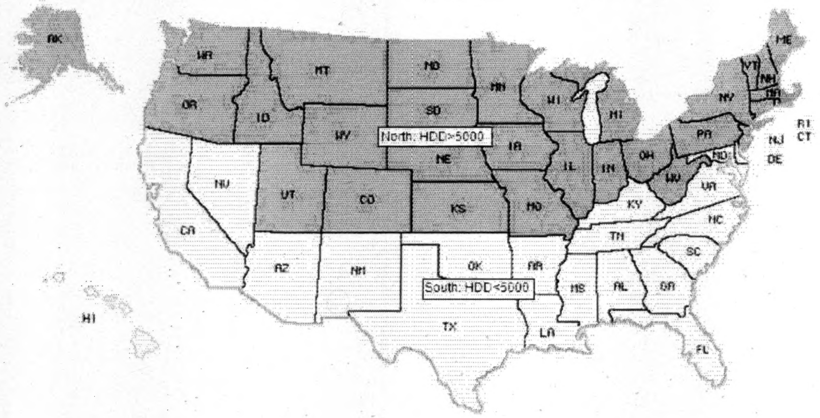

Figure III.1 Map of the Regions for the Analysis of Furnace Standards

ACEEE, NAHB, NRDC, SGA, NMHC, NAA, and NLHA stated that setting regional standards with condensing NWGFs in the North and non-condensing NWGFs in the South would be an alternative to a national 92-percent AFUE standard, separate standards for non-condensing and condensing furnaces, or separate standards for small furnaces. (ACEEE, No. 0113 at pp. 4–5; NAHB, No. 0124 at p. 5; NRDC, No. 0134 at p. 4; SGA, No. 0145 at p. 2; NMHC, NAA, and NLHA, No. 0117 at p. 5) However, ACEEE and NRDC added that enforcing a regional standard is more difficult than enforcing a standard for small-capacity units. (ACEEE, No. 0113 at p. 5; NRDC, No. 0134 at p. 4)

SGA stated that even regional standards would only be a partial solution because there are still numerous situations where condensing furnaces cannot be installed, including multi-family or row houses and other situations where side venting is not possible. SGA stated that many single-family retrofits, especially in small homes, would not be able to economically justify replacing a non-condensing furnace with a condensing furnace. (SGA, No. 0145 at p. 2) NMHC, NAA, and NLHA stated that with a regional standard, it would be necessary to provide a condensing furnace exemption in the North for existing buildings or a waiver process for especially difficult retrofits to provide relief for some or all of the more expensive retrofits. (NMHC, NAA, and NLHA, No. 0117 at p. 5)

DOE evaluated regional standards (North/South) for the SNOPR as TSL 3, and it determined that they would save much less energy than the currently-proposed standards. In addition, as discussed in section IV.F.2.b, DOE's analysis already includes installation costs where venting for condensing furnaces is difficult. Also, in Canada, where the national standards require condensing furnaces and which has many similarities to the stock using NWGFs in the North, neither Natural Resources Canada nor its mortgage agency has found any significant implementation problems with that standard. DOE's proposed separate standards for small and large NWGFs would significantly reduce the number of installations described as difficult. Therefore, DOE is not proposing regional standards for residential furnaces.

7. Regulatory Issues

AGA and Laclede stated that NEPA compliance should be required for this rulemaking because the rule is projected by DOE to cause significant changes in the outdoor concentrations of potentially harmful substances, including significant increases in the emission of mercury, SO_2, and N_2O. AGA and Laclede stated that in addition, DOE projects that the proposed standards would result in net increases of about 3,000 MW of electricity generation capacity, including 600 MW of coal-fired generation capacity, which should be considered a significant change in manufacturing infrastructure. AGA and Laclede also stated that categorical exclusions are not appropriate due to extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. (AGA, No. 0118 at p. 30; Laclede, No. 0141 at p. 35)

DOE has reviewed the proposed rule pursuant to the National Environmental Policy Act (NEPA) of 1969. Section VI.D of this document describes this review, including the consideration of the factors mentioned in the above comments.

AHRI stated that including environmental benefits in EPCA's cost-benefit analysis is impermissible. AHRI stated that by relying on environmental impacts in the cost-benefit analysis, which Congress did not intend DOE to consider, DOE acted arbitrarily and capriciously. AHRI stated that although DOE might argue that environmental factors can be considered as "other factors the Secretary considers relevant," DOE specifically disclaimed any such argument in the NOPR. (AHRI, No. 0159 at p. 23) Rheem expressed agreement with AHRI's points. (Rheem, No. 0142 at p. 2)

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy and water conservation, which is one of the seven factors that EPCA requires DOE to consider when tentatively determining whether proposed standards are economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) In particular, given the threats posed by global climate change to the economy, public health, ecosystems, and national security,[28] combined with the well-recognized potential of well-designed energy conservation measures to reduce GHG emissions, DOE believes that evaluation of the potential benefits from slowing anthropogenic climate change are properly part of the consideration of the need for national energy conservation.

AHRI also stated that DOE's consideration of environmental factors is imbalanced relative to the other required factors under EPCA, and the environmental impacts, rather than energy savings at point of use, are the fundamental justification of the proposed standards. (AHRI, No. 0159 at p. 23) DOE disagrees. As discussed in section III.E.1, DOE considers seven factors (listed at 42 U.S.C. 6295(o)(2)(B)(i)) when tentatively determining whether the proposed standards are economically justified. DOE considers environmental benefits as part of its evaluation of the need for national energy and water conservation. To date, this accounting for environmental benefits has not had a decisive impact on the outcome of any standards rulemaking—*i.e.,* DOE would have adopted the same standards even if environmental benefits had not been considered at all. The same is true for today's SNOPR. DOE further notes that EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard, and not just the energy savings at point of use. (42 U.S.C. 6295(o)(2)(B)(i)(III))

Laclede stated that key elements of the analysis have not been subjected to an unbiased and current peer review as required by an OMB Bulletin. Laclede commented that the peer review cited in the NOPR is approximately eight years old and does not cover a number of key elements in DOE's furnaces analysis. Laclede stated that the peer review process was insufficiently robust and independent. (Laclede, No. 0141 at pp. 37–38)

As discussed in more detail in section VI.L, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used, and prepared a Peer Review Report, consistent with the requirements of OMB's Bulletin, that describes the peer review. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present NWGFs and MHGFs rulemaking.

In addition, there has been extensive interaction with stakeholder experts and detailed review by these parties of DOE's analytical models and data in the subject furnace standards rulemaking. As further discussed in section VI.L, DOE incorporated a number of inputs from these reviewers into its analyses in this rulemaking. For the reasons described in section VI.L, DOE believes that the reviews provided by stakeholders in the course of this rulemaking could complement the prior peer review.

Laclede stated that DOE did not respond to Laclede's Freedom of Information Act (FOIA) request. (Laclede, No. 0141 at pp. 38–39). DOE has since responded to this request.

CGS and NJNG stated that under section 305(f) [*sic*] of EPCA and 42 U.S.C. 6291(f) [*sic*], for furnaces with an input capacity of 45 kBtu/h or smaller, DOE cannot promulgate efficiency standards that would lead to significant switching from natural gas furnaces to electric resistance heating systems. (CGS, No. 0098 at pp. 4–5; NJNG, No. 0119 at p. 2) (DOE believes the commenters intended to reference 42 U.S.C. 6295(f); 42 U.S.C. 6291(f) does not exist.) In response, DOE notes that because the standard proposed in this SNOPR for furnaces with a certified input capacity of 55 kBtu/h or smaller is easily met by typical equipment in the market, it would not be expected to lead to significant fuel switching for such furnaces.

Carrier stated that the rapid pace of regulatory change on contractors and consumers (due to revised furnace standards in addition to other regulatory revisions and new regulations introduced throughout the last decade) will create ongoing confusion in the marketplace, thereby increasing the risk of poor installation quality and customer dissatisfaction. (Carrier, No. 0116 at p. 33) There have been limited changes in the standards applicable for NWGFs since originally established in EPCA. In addition, condensing NWGFs already have a significant market share, indicating that contractors have experience installing these furnaces. Distributors and manufacturers will have ample time to prepare for the amended standards, given the lead time of 5 years prior to the compliance date.

Nortek stated that DOE must consider the cumulative burden of all rulemakings affecting heating and air conditioning systems. According to Nortek, rulemakings on standby power, furnace fan efficiency, and CAC and heat pumps are on a path to potentially take effect within a year or two of each other. Nortek stated that depending on the level set by the CAC and heat pump rule, this could mean that a consumer that now can simply replace a CAC system with a condensing unit and a coil, may instead have to purchase and install not only a condensing unit and coil, but also a 92-percent AFUE furnace with a high efficiency motor and a new thermostat required by the new CAC system. Nortek believes this could increase the cost by several thousand dollars, pricing a complete system out of the reach of many homeowners and forcing them to seek less expensive alternatives. (Nortek, No. 0137 at p. 5) In response, DOE understands that many consumers replacing a CAC would be more likely to use the existing noncondensing furnace (albeit achieving lower CAC efficiency) rather than purchase and install a new furnace at the same time. It is expected that a consumer's decision to install a new furnace would depend on the age and condition of the existing furnace.

8. Certification of Compliance and Level of Precision

In this SNOPR, DOE is clarifying the standards to reflect the level of precision required under the reporting and compliance requirements. In the January 2016 Test Procedure Final Rule, DOE clarified that a represented AFUE value is to be truncated to the tenth of a percentage point. 81 FR 2628, 2638; 10 CFR 429.18(a)(2)(vii). Compliance for furnaces and boilers is determined at this level of precision. This SNOPR proposes to amend the standards to reflect a consistent level of precision with the compliance and reporting requirements. DOE also proposes a clarification that input capacity for the purpose of certifying compliance means the nameplate maximum fuel input rate. These revisions are for clarification and consistency, and reflect current practice. DOE does not anticipate that these revisions would impact the current compliance of a manufacturer.

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[28] National Climate Assessment 2014 (Available at: *http://nca2014.globalchange.gov/*). The National Security Implications of a Changing Climate (May 2015), The White House (Available at: *https://www.whitehouse.gov/the-press-office/2015/05/20/white-house-report-national-security-implications-changing-climate*).

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to NWGFs and MHGFs. Separate subsections address each component of DOE's analyses. Comments on the methodology and DOE's responses are presented in each section.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=62.* Additionally, DOE used output from the latest version of EIA's *Annual Energy Outlook* (*AEO*), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) historical shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of NWGFs and MHGFs. The key findings of DOE's market assessment are summarized below. See chapter 3 of the SNOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

a. General Approach

EPCA defines a "furnace" as "a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which:

(1) Is designed to be the principal heating source for the living space of a residence;

(2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(4) has a heat input rate[29] of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces." (42 U.S.C. 6291(23))

DOE has incorporated this definition into its regulations in the Code of Federal Regulations (CFR) at 10 CFR 430.2.

EPCA's definition of a "furnace" covers the following types of products: (1) Gas furnaces (non-weatherized and weatherized); (2) oil-fired furnaces (non-weatherized and weatherized); (3) mobile home furnaces (gas and oil-fired); (4) electric resistance furnaces; (5) hot water boilers (gas and oil-fired); (6) steam boilers (gas and oil-fired); and (7) combination space/water heating appliances (water-heater/fancoil combination units and boiler/tankless coil combination units). As discussed in the March 2015 NOPR, DOE agreed to the partial vacatur and remand of the June 2011 DFR, specifically as it related to energy conservation standards for NWGFs and MHGFs in the settlement agreement to resolve the litigation in *American Public Gas Ass'n* v. *U.S. Dept. of Energy* (No. 11–1485, D.C. Cir. Filed Dec 23, 2011). 80 FR 13120, 13130–32 (March 12, 2015). Therefore, DOE only considered amending the energy conservation standards for these two product classes of residential furnaces (*i.e.,* NWGFs and MHGFs) in the March 2015 NOPR.

As discussed in section III.A, when evaluating and establishing energy conservation standards, DOE is authorized to divide covered products into product classes by the type of energy used, by capacity, or by other performance-related features that justify a different standard. In making a determination whether capacity or other performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (42 U.S.C. 6295(q))

In response to the March 2015 NOPR, a number of interested parties raised concerns pertaining to potential impacts of a national condensing standard on certain consumers as a result of either increased installation costs (due to installing a condensing furnace) or switching to electric heat (resulting in higher monthly bills). Several commenters responding to the March 2015 NOPR recommended that DOE consider establishing a separate product class for furnaces with a lower input capacity, one of the statutory bases for establishing a separate product class, and analyze a less stringent standard to reduce negative impacts on some furnace consumers while maintaining the overall economic and environmental benefits of the standards. 80 FR 55038, 55038–39 (Sept. 14, 2015). The September 2015 NODA, therefore, contained analyses examining the potential impacts of such a product class. In the September 2015 NODA, DOE discussed certain comments that were received in response to the March 2015 NOPR that were relevant to such a product class.

In response to the March 2015 NOPR and September 2015 NODA, several stakeholders recommended that DOE establish separate product classes based on furnace capacity to preserve the availability of non-condensing NWGFs for buildings with lower heating loads and, thereby help alleviate the negative impacts of the proposed standard. (ASAP, No. 0154–1 at p. 8; ASE, No. 0115 at p. 1; ACEEE, No. 0113 at p. 3; NMHC, NAA, and NLHA, No. 0117 at p. 5; Joint Consumer Commenters, No. 0123 at pp. 8, 35; NRDC, No. 0134 at pp. 2, 4–5; NRDC, No. 0186 at p. 1; A Ware, No. 0204 at p. 1; NPGA, No. 0171 at p. 2)[30] Furthermore, ACEEE and AHRI stated that a size threshold would not present the potential enforcement challenges associated with regional standards. (ACEEE, No. 0113 at p. 3; AHRI, No. 0181 at p. 2) Ubuntu expressed the belief that establishing separate furnace classes by capacity is a viable solution for achieving energy efficiency while also protecting low-income and minority communities. (Ubuntu, No. 0191 at p. 1)

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[29] DOE uses certified input capacity to mean heat input rate in determining scope of coverage and product class.

[30] A notation in this form provides a reference for information that is in Docket No. EERE–2014–BT–STD–0031 (unless otherwise denoted) from the listed stakeholder on the specified page of the specified docket number. For example, the first comment is from ASAP on p. 8 of document number 0154–1 in the docket.

NRDC stated that separating furnaces based on capacity is reasonable because larger and smaller furnaces are distinct products that serve different homes. NRDC stated that the consumer utility in both cases is still home heating but smaller furnaces provide sufficient consumer utility only for those homes with lower heating loads, whether due to excellent insulation or geographic location. (NRDC, No. 0134 at pp. 6–7) NRDC also theorized that separating furnaces based on capacity may reduce the negative impacts for manufacturers by limiting conversion costs. (NRDC, No. 0134 at pp. 3–4)

Many stakeholders commented in response to DOE's September 2015 NODA that they supported creation of product classes by capacity. AHRI, Carrier, JCI, and Ingersoll Rand stated that separating small and large furnaces by product class provides a reasonable solution for most of the installations that cannot accommodate a condensing furnace without extraordinary costs or installation site renovations; address the concern of those areas of the U.S. that have low heating loads where the installation of a condensing furnace is not economically justified; and focus the benefit of a condensing standard on the input capacities where energy savings are maximized. (AHRI, No. 0181 at pp. 1–2; Carrier, No. 0183 at pp. 2–3; JCI, No. 0202 at p. 3; Ingersoll Rand, No. 0203 at p. 1) Carrier and JCI added that it benefits economically-challenged or low-income individuals/families with a gas furnace option that minimizes installation or electrical changes. (Carrier, No. 0183 at p.3; JCI, No. 0202 at p. 3) Carrier commented that the approach may be satisfactory to all stakeholders and satisfy the parameters that guide DOE's decision-making process. Carrier, Ingersoll Rand, and AHRI stated that this concept warranted further consideration. (Carrier, No. 0183 at p. 2; Ingersoll Rand, No. 0182 at p. 4; AHRI, No. 0181 at p. 1)

Lennox also agreed that the September 2015 NODA justified creating a separate product class for lower-input capacity non-condensing furnaces. Lennox stated that lower capacity furnaces serve smaller residences where the physical complexities and costs of replacing non-condensing furnaces with condensing furnaces is unduly burdensome, and that setting separate standard levels for smaller non-condensing furnaces could increase economic benefits and energy savings. (Lennox, No. 0201 at pp. 3–4)

AGL Resources stated that EPCA gives DOE the authority to establish separate product classes on the basis of product capacity, and DOE has previously opted to create separate product classes on the basis of product capacity for a wide variety of covered products. (AGL Resources, No. 0112 at pp. 15–16)

Johnson also commented that a two-product-class standard could help prevent furnace oversizing, which could increase the seasonal efficiency of the furnace and reduce energy consumption. In addition, Johnson stated that a two-product-class standard could help encourage other energy conservation measures, such as increasing the insulation in the ceiling and walls, improved caulking and weather-stripping doors and windows, to enable consumers to purchase a small furnace. (Johnson, No. 0190 at p. 1) In its comments, the Joint Consumer Commenters requested DOE consider tailoring the rule to the particular circumstances (*e.g.* mild climates) that result in consumers having net costs based on furnace input capacity in order to reduce the number of losers and increase the overall net benefit. (Joint Consumer Commenters, No. 0123 at pp. 1, 11)

DOE has tentatively concluded that the establishment of a small furnace class has merit. Accordingly, DOE decided to develop a capacity-based approach to set standards for NWGFs. In determining whether a less-stringent standard is justified for small NWGFs pursuant to 42 U.S.C. 6295(q), DOE considered the costs and benefits of such a capacity-based approach in light of the results contained in the September 2015 NODA. In this way, DOE sought to determine the impact that a modified standard in an SNOPR would be expected to have in terms of mitigating fuel switching. The building sample and furnace sizing criteria developed for the LCC analysis (described in section E) show that small furnaces are commonly installed in circumstances that are different from those of large furnaces—namely that the buildings into which small furnaces are installed are more often smaller or are found in the South where heating loads are much lower due to warmer climate. The cost-benefit analysis found that a less-stringent standard for small furnaces would be economically justified because it would reduce the number of consumers experiencing net costs (due to higher installation costs for condensing furnaces or switching to electric heat). Thus, establishing a less stringent standard for small furnaces would reduce fuel switching because they are more likely to be used in instances where there would otherwise be negative impacts due to a higher standard.

b. Condensing and Non-Condensing Furnaces

Other stakeholders urged DOE to set standards based on the use of condensing vs. non-condensing technology, arguing that the type of venting required for furnaces constitutes a "feature." In the March 2015 NOPR, DOE stated that it would not consider separate product classes for condensing and non-condensing furnaces and detailed its reasons for not doing so. 80 FR 13120, 13137–38 (March 12, 2015) However, in response to the March 2015 NOPR, a number of stakeholders still encouraged DOE to establish separate efficiency standards for non-condensing and condensing NWGFs. Those comments are available in the docket for this rulemaking. Those same commenters raised, essentially, the same comments in response to the September 2015 NODA while also responding to the concept of a small capacity product class.

As explained in detail in the March 2015 NOPR, DOE has implemented the "feature" provision of EPCA such that the Department ascertains the utility of the purported feature to the consumer as the basis for setting a separate product class. 80 FR 13120, 13137–38 (March 12, 2015). In the present case, DOE maintains the view that the consumer utility of a furnace is that it provides heat to a dwelling, and that the type of venting used for particular furnace technologies does not impact that utility. As further explained in the March 2015 NOPR, DOE has consistently followed this approach in its various appliance rulemakings, making such determinations on a case-by-case basis to reflect the unique characteristics and circumstances of different products. As explained in the March 2015 NOPR, disparate products may have very different consumer utilities, thereby making direct comparisons difficult and potentially misleading. *Id.* Furthermore, tying the concept of "feature" to a specific technology, as suggested in the gas utility comments, would effectively lock in the technology existing at the time of such decision as the ceiling for product efficiency. As a result, doing so would eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for consumers. Moreover, establishing separate standards based on preserving a type of venting (*i.e.*, establishing separate classes for condensing and non-condensing furnaces) would not place any restriction on the use of non-condensing furnaces and, therefore, would not be a meaningful standard, resulting in little or no change in products offered and their market shares nor energy savings. If such classes were to be established, the baseline efficiency level for non-condensing products would be 80-percent (*i.e.,* the current minimum standard) and baseline for the condensing product class would likely be 90-percent AFUE (based on condensing products currently on the market). There are currently no efficiency levels available for non-condensing furnaces that are above 80-percent. Using such a product class approach, furnace manufacturers could continue making and selling furnaces at the current baseline efficiency (80-percent AFUE), undercutting any possible energy savings that might be achieved by improving the efficiency standard for the condensing product class (*i.e.,* setting a standard higher than 90-percent AFUE for the condensing product class). For these reasons, DOE continues to decline to define a separate product class for furnaces based on venting. (*i.e.,* non-condensing and condensing product classes).

In its comments in response to the September 2015 NODA, Laclede stated that creating a separate product class based on the input capacities analyzed would still result in the unavailability of large non-condensing furnaces and cause millions of customers to either choose a furnace that is not cost effective or switch to other equipment that will increase overall energy usage and degrade the environment. Laclede believed that the September 2015 NODA did not provide evidence or analysis that would support the establishment of a separate product class for small furnaces. (Laclede, No. 0178 at pp. 5–6)

Rheem also commented that the adoption of a two-tier product class system would limit choices for residential furnace consumers. Rheem added that although capacity-based product classes would benefit low and fixed income consumers who live in small energy-efficient homes, the concept would not aid consumers with challenging financial circumstances who live in older homes that are not well insulated or maintained. (Rheem, No. 0184 at p. 2; Rheem, No. 0199 at p. 2)

NPGA stated that DOE's categorization of "small" furnaces by input capacity is not adequately justified and that DOE must produce analysis and technical documents that demonstrate the division of product classes based on input capacity is the most practical and economical means to achieve the energy efficiency objectives. (NPGA, No. 0200 at pp. 1–2)

With regards to concerns that the separate small furnace product class approach would result in the unavailability of a covered product (namely non-condensing large furnaces), DOE notes that, as discussed above, venting is not a "feature" of furnaces under U.S.C. 6295(o)(4).). Therefore, DOE does not agree that a standard that would effectively require the use of condensing technology for large furnaces, as has been proposed in this SNOPR, would result in the unavailability of products with similar performance characteristics and features that are substantially the same as those generally available today. DOE has tentatively concluded that the methods by which a furnace is vented, which is a significant differentiator of condensing and non-condensing furnaces, do not provide any separate performance-related utility, and, therefore, DOE has no statutory basis for defining a separate product class based on venting and drainage characterisitics. NWGF and MHGF venting methods do not provide unique utility to consumers beyond the basic function of providing heat, which all furnaces perform. The possibility that installing a non-condensing furnace may be less costly than a condensing furnace due to the difference in venting methods does not justify separating the two types of NWGFs into different product classes. As previously discussed, DOE is proposing a separate product class based on the input capacity of NWGFs. The establishment of a small furnace product class would reduce the number of consumers that would experience a net cost, as compared to a single, more stringent standard, including consumers in buildings such as rowhomes, townhomes, or multi-family dwellings.

In response to Laclede's and Rheem's concern that some consumers may experience a net cost under the proposed standard, DOE has taken such considerations into account through its LCC analysis (see section IV.E.3) and consumer subgroup analysis (see section IV.I), while national energy savings (NES) are estimated as described in section IV.H and environmental impacts are estimated as described in sections IV.K and IV.L. As described in section IV.A.1.c below, DOE has tentatively determined based on its comprehensive cost-benefit analysis that the benefits of separate standards for small and large NWGFs outweigh the burdens.

EEI stated that DOE cannot justify a separate standard for small and large furnaces by claiming that the small furnace standard produces greater savings due to less fuel switching. (EEI, No. 0179 at p. 10) In response, DOE notes that fuel switching is only one component of the rationale for proposing such an approach, and for the reasons stated it is a valid consideration. Moreover, as described below in IV.A.1.c, DOE was required by statute in a prior rulemaking to consider differential standards for small furnaces based upon input capacity as a means to address fuel switching pursuant to 42 U.S.C. 6295(f)(1)(B).

c. Input Capacity

Because there are potential benefits of establishing a separate small furnaces product class, DOE analyzed these benefits to determine a potential capacity cutoff for small furnaces. Typically, DOE looks to natural capacity breakpoints in a given market to create new product classes based on capacity. However, DOE did not find an obvious breakpoint in the residential gas furnace market based upon input capacity that would delineate a boundary between the small and large non-weatherized gas furnace product classes. Commenters on the September 2015 NODA who supported the concept of separate, capacity-based product classes expressed varying viewpoints as to the most appropriate boundary for those classes, as outlined below.

ACEEE and the Joint Consumer Commenters recommended a capacity limit for small NWGFs of 50 kBtu/h or less. (ACEEE, No. 0113 at p. 3; Joint Consumer Commenters, No. 0123 at pp. 1, 9) ACEEE also stated that by setting a higher standard for large NWGFs, DOE will make up some of the lost energy savings by leaving the standard for small NWGFs unchanged, achieving larger national benefits. (ACEEE, No. 0113 at p. 4)

NRDC stated that the capacity threshold should be set low enough that the benefits of a national condensing standard are largely preserved while allowing consumers in small and moderately-sized, well insulated, and weatherized homes in moderate and warm climates to have a non-condensing option. NRDC stated that a key objective in choosing a capacity threshold is to capture most of the energy and cost savings potential of high efficiency furnaces while simultaneously allowing homes with the lowest heating load to use 80-percent AFUE furnaces where those are significantly more cost-effective. NRDC stated that encouraging utility efficiency programs that improve insulation and weatherization in new and existing homes, and reducing the risk and extent of negative impacts on manufacturers, are valuable secondary objectives. (NRDC, No. 0134 at pp. 2, 4–5) NRDC stated that the NODA analysis suggests that the most appropriate capacity threshold lies between 50 kBtu/h and 65 kBtu/h input capacity. (NRDC, No. 0186 at p. 2) (In response to the March 2015 NOPR, NRDC had initially suggested a threshold of 50 kBtu/h output capacity; NRDC, No. 134 at p. 5). NRDC commented that DOE should evaluate and publish the distribution of consumer, environmental, energy savings, and manufacturer impacts as a function of furnace capacity. This will serve to highlight that larger and smaller furnaces are distinct products that serve different homes. (NRDC, No. 0134, pp. 6134, p. 2–7) NRDC encouraged DOE to perform a broader range of analyses in an SNOPR, *e.g.,* from 40 kBtu/h to 75 kBtu/h, to choose an appropriate threshold. (NRDC, No. 0186 at p. 2) NRDC also recommended that DOE adopt a 95-percent AFUE for large furnaces, regardless of the capacity threshold for small furnaces due to the significant benefits to customers and the environment, and that DOE adopt an 80-percent AFUE standard for furnaces below the specified maximum capacity threshold. (NRDC, No. 0186 at pp. 2–3)

CEC requested that if DOE continues with a two-tier capacity-based approach, it should publish a final rule that at minimum incorporates the following recommendations: (1) Defines a small furnace capacity cutoff at 45 kBtu/hour to ensure that smaller furnaces are used only for homes with small heating loads, while also achieving the most energy savings of any of the cutoff points; (2) analyzes alternative standard levels in addition to 80 percent AFUE for small furnaces; (3) set the standard for large furnaces at 98 percent AFUE. (CEC, No. 0172 at p. 2)

The Efficiency Advocates stated that it is important that the cut-off for small furnaces be set low enough to avoid having non-condensing furnaces installed in a large fraction of new homes each year. The Efficiency Advocates expressed support for a capacity limit of no more than 55 kBtu/h because of impacts on state and local building energy code requirements. The Efficiency Advocates also stated that using the 50 to 55 kBtu/h small furnace limit, the energy savings and net consumer benefits are significantly higher for a 95-percent AFUE standard for large furnaces than for a 92-percent AFUE standard. Therefore, the Efficiency Advocates recommended that DOE adopt a 95-percent AFUE for large furnaces, regardless of the capacity threshold for small furnaces due to the significant benefits to customers and the environment. The Efficiency Advocates stated that a 95-percent AFUE standard becomes even more important if DOE sets the size limit higher than they recommend, because the higher the breakpoint between small and large furnaces, the lower the energy savings. (Efficiency Advocates, No. 0196 at pp. 3–5)

ASE suggested an input capacity limit for small NWGFs of no more than 50 kBtu/h to 65 kBtu/h. However, ASE urged DOE to take more fully into account the success with condensing furnace installations in many parts of the US, Canada, and Europe, as well as the recent emergence of innovative venting solutions. (ASE, No. 0115 at p. 1) ASE also recommended that DOE assure that the majority of furnaces be covered by a 95-percent AFUE standard. (ASE, No. 0115 at ppp. 1–2)

AHRI commented that the NODA indicates that at each efficiency level, the average LCC savings across the considered small furnace input capacity definitions are similar, but the estimated percentage of consumers who experience a net cost decreases significantly as the input capacity definition for small furnaces increases. AHRI stated that the average LCC savings for the small furnace capacity limits from 70 kBtu/h to 85 kBtu/h are higher than the LCC savings for the small furnace capacity limits lower than 60 kBtu/h. AHRI stated that at a small furnace capacity limit of 80 kBtu/h or higher, the percent of consumer with a net cost drops to 2 percent, less than one-third the percentage at the 65 kBtu/h limit and less than one-eighth the percentage at the 55 kBtu/h limit. AHRI noted that the combination of 92-percent AFUE for large furnaces and 80 percent for small furnaces provides the highest average LCC savings for every input capacity. (AHRI, No. 0181 at pp. 1, 3)

Of the input capacities reviewed by DOE in the NODA, NPGA stated that ≤65 kBtu/h presents the most reasonable benefits. NPGA stated that the information presented by DOE demonstrates that ≤65 kBtu/h presents valuable LCC savings that are comparable among consumers in different regions. NPGA also stated that an input capacity of less than 65 kBtu/h presents the lowest percentage of consumers likely to experience a net cost. (NPGA, No. 0171 at p. 4)

Johnson stated that the small furnace size limit should be at least 65 kBtu/h. (Johnson, No. 0190 at p. 1)

Ubuntu stated that based on existing housing data, a furnace size threshold of 75 kBtu/h is needed to effectively target larger furnaces and homes that have the greatest impact on national energy efficiency, while also protecting smaller furnaces in homes where low-income and working class families are likely to reside. Ubuntu also stated that a furnace size threshold of 75 kBtu/h is necessary to prevent low-income homeowners and landlords who rent to low-income families from trying to avoid costly condensing furnace installations by switching to lower-initial cost electric alternatives that lead to higher energy expenses in the long term. (Ubuntu, No. 0191 at p. 1)

Lennox stated that a limit of 55 kBtu/h for small furnaces only provides for the installation of non-condensing options in very small dwellings, especially in colder climates, and is not adequate to provide relief for many consumers. Lennox stated that the 55 kBtu/h limit also negatively impacts Southern consumers where a condensing furnace is not economically feasible and will detract from cooling operational efficiency, which is paramount in the South. Additionally, Lennox stated that the 55 kBtu/h limit disproportionately impacts low-income consumers. Lennox indicated that a limit of 80 kBtu/h improves LCC savings and significantly reduces the percentage of consumers with net cost. Lennox recommended DOE to further analyze the 80 kBtu/h input level for non-condensing products combined with a 92-percent AFUE standard for products above 80 kBtu/h. (Lennox, No. 0201 at p. 2) Lennox stated that with higher input capacity limits for small furnaces, the LCC analysis indicates that a 92-percent AFUE standard optimizes the LCC savings while minimizing the percentage of consumers with negative cost impacts. (Lennox, No. 0201 at p. 5) Lennox also stated that higher capacity limits need to be analyzed to fully evaluate the trend of a decreasing percentage of consumers that would experience a net cost as the definition of small furnace expands to include more furnaces. (Lennox, No. 0201 at p. 4)

JCI recommended DOE consider thresholds of up to 80 kBtu/h to properly consider the various applications, installations and geographic regions. (JCI, No. 0202 at pp. 3–4)

Ingersoll Rand stated that DOE must consider input capacity limits greater than 65 kBtu/h to reflect the furnace market and consumer needs. Ingersoll Rand recommended that DOE consider not only the furnace but also the central air conditioner in defining the input capacity of small furnaces because the air conditioning needs in the South are hard to meet with a furnace that is smaller than 65 kBtu/h while at the same time providing a comfortable supply air temperature in heating mode. For these situations, Ingersoll Rand stated that an appropriate maximum input for the non-condensing class is in the 75–80 kBtu/h range. (Ingersoll Rand, No. 0182 at p. 5; Ingersoll Rand, No. 0203 at p. 2)

NAHB and NMHC, NAA, and NLHA requested that DOE retain the 80-percent AFUE minimum for NWGFs with an input capacity of 80 kBtu/h or less. (NAHB, No. 0124 at p. 5; NMHC, NAA, and NLHA, No. 0117 at p. 5) Carrier recommended DOE keep non-condensing furnaces with an input capacity of up to 90 kBtu/h for replacement applications where a condensing furnace would be cost prohibitive. (Carrier, No. 0116 at p. 9)

NPGA and AHRI urged DOE to broaden the input capacities reviewed and present for public comment separate standards for small NWGFs defined as ≤100 kBtu/h. (NPGA, No. 0171 at pp. 3–4; AHRI, No. 0167 at p. 1)

Several commenters suggested establishing a separate product class based on the size of the dwelling in which the furnace would be installed, which would serve as a proxy for capacity. Washington Gas and NJNG recommended that DOE establish a separate product class for NWGFs for consumers living in smaller dwellings. (Washington Gas, No. 0133 at p. 2; NJNG, No. 0119 at pp. 2–3) AABE, A Ware, and AGL Resources stated that establishing a cut-off at 1,500 square feet and below could potentially protect the larger part of low-income and working-class families. (AABE, No. 0197 at pp. 1–2; A Ware, No. 0204 at p. 1; AGL Resources, No. 0112 at pp. 15–16)

DOE relied on the results of the September 2015 NODA and the analyses prepared for this SNOPR and its policy discretion based on congressional intent to set the proposed bounds of the small and large non-weatherized gas furnace products classes, with special attention being paid to the prevention of fuel switching. In its analysis, in response to suggestions to broaden the range of input capacities considered for the small furnace threshold, DOE also considered TSLs for this SNOPR using 70 kBtu/h and 80 kBtu/h for the small furnace threshold.

For the small furnace product class, DOE only analyzed a standard at 80 percent AFUE. DOE did not find furnaces with AFUE ratings between 80 percent and 90 percent on the current market. DOE understands that such units are generally not viable products in the residential furnace market because such efficiencies approach condensing or in some applications may condense, requiring the design of the unit to incorporate features to handle condensation and prevent corrosion. DOE understands that such features are not cost effective for consumers unless the unit is designed to fully condense, and therefore furnaces with AFUE between 80 percent and 90 percent are generally not produced by manufacturers. DOE did, however, consider a 95 percent standard level for the proposed large furnace product class, as was suggested by some stakeholders. DOE did not ultimately propose this level, and DOE's rationale for selecting the proposed standard levels is contained in section V of this document.

In its analysis, DOE prioritized alleviating the most difficult installation problems and impacts on consumers in the South, all while carefully balancing the impacts on NES and NPV. As a result of these deliberations, DOE has tentatively determined that the requirements of 42 U.S.C. 6295(q)(1) would be satisfied by a small furnace product class for non-weatherized gas furnaces with a certified input capacity cut-off of 55 kBtu/h (for which a non-condensing standard (80 percent AFUE) would apply). An input capacity product class distinction at this level would allow for the best balance of alleviating installation and other cost concerns for the consumer while maintaining national energy savings and associated benefits. Under such a scenario with a 92-percent AFUE standard level for large furnaces (*i.e.,* >55 kBtu/h certified input capacity) and an 80-percent AFUE standard level for small furnaces (*i.e.,* ≤55 kBtu/h certified input capacity), the estimated average LCC savings would increase by $75 to $692, as compared to a savings of $617 for the single standard at 92-percent AFUE. The share of consumers experiencing a net cost would be reduced from 17 percent under the single 92-percent to 11 percent under the approach presented in this SNOPR. National energy savings would increase from 2.8 quads for the single 92-percent AFUE standard to 2.9 quads under the approach presented in this SNOPR (by reducing the share of consumers switching to electric heat from 11.5 percent to 6.8 percent). See section V for full analytical results.

Based upon the foregoing considerations, DOE proposes to establish a separate product class for small NWGFs, defined as those furnaces with a certified input capacity of less than or equal to 55 kBtu/h. Pursuant to 42 U.S.C. 6295(q)(1), DOE has tentatively determined that the certified input capacity of these furnaces is a statutorily permissible basis for setting a class and that a less-stringent standard would be justified for this class, as compared to furnaces with a certified input capacity above 55 kBtu/h, due to the potential for less fuel switching. It is noted in addition that these positive impacts would also be accompanied by an overall increase in NES, NPV, and CO_2 reductions, as compared to the 92-percent AFUE standard originally proposed for all of the subject furnaces.

DOE notes that it was required by statute in a prior rulemaking to consider differential standards for small furnaces based upon input capacity as a means to address fuel switching. Specifically, under 42 U.S.C. 6295(f)(1)(B), Congress directed DOE to consider the appropriate standard level to be set for furnaces with an input capacity of less than 45 kBtu/h. In doing so, Congress directed DOE to consider a standard level within a specified range that was not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement. *Id.* at 6295(f)(1)(B)(iii)).

DOE could justify more than one product class capacity cutoff for small furnaces based on the available data. For example, if DOE only prioritized reducing fuel switching for small gas furnaces, a small furnace product class at 60 kBtu/h or less might be more appropriate. DOE notes that at a 60 kBtu/h cut-off, the share of consumers with net costs is further reduced from 11.1-percent to 6.6-percent and the share of consumers switching to electric heat is further reduced from 6.8-percent to 4.1-percent, but the national energy savings is also reduced from 2.9 to 2.3 quads.

DOE seeks further input regarding selection of the most appropriate small furnaces product class. DOE may consider adopting a different certified input capacity threshold for defining the class of small furnaces in the final rule, or may not adopt a small capacity product class, and seeks comment from stakeholders on its weighing of the benefits and burdens of the various certified input capacity thresholds for defining the small furnaces product class. Although DOE has tentatively determined that the 55 kBtu/h division offers the best balance of benefits and burdens, DOE seeks comment on the balancing of benefits and burdens regarding a small furnace product class of 60 kBtu/h or less. This is identified as issue 1 in section VII.E "Issues on Which DOE Seeks Comment."

d. Other Comments

CEC expressed concern about the impact that a two-tier capacity-based approach would have on new construction in the nation, particularly given the preemptive effect of federal appliance standards on state building codes. CEC stated that a two-tier capacity-based approach would create a difficult situation for California: Either the state could continue to ensure that furnaces are properly sized, which may mean installing a smaller-size furnace with a lower efficiency standard, or it could require larger furnaces to be installed, but sacrifice proper sizing for a more-efficient product. (CEC, No. 0172 at pp. 1–2) DOE recognizes the preemptive effect energy conservation standards may have on State building code standards. (*See* 42 U.S.C. 6297(f)(3)) The sizing assumptions used for the cost-benefit analysis are discussed in section IV.E.

Some stakeholders commented on separate small and large product classes for MHGFs. AHRI and JCI requested that DOE analyze separate standard levels for small and large MHGFs. (AHRI, No. 0195 at p. 1; JCI, No. 0202 at p. 4) JCI suggested that 80-percent AFUE MHGFs with an input capacity of up to 80 kBtu/h should be allowed in replacement applications to provide cost-effective replacement units for consumers that are typically known to be an economically-challenged market segment. (JCI, No. 0202 at p. 4) ACEEE did not recommend a size cutoff for MHGFs, but stated that if DOE were to consider such a cutoff, it would need to be much lower than that for NWGFs. (ACEEE, No. 0113 at p. 5)

DOE does not believe that the considerations for small NWGFs apply equally to small MHGFs. In particular, DOE believes the installation and usage of small and large MHGF are not significantly different and that the cost-benefit is similar regardless of capacity. Therefore, DOE is not proposing a separate product class for small MHGFs.

2. Technology Options

In the market analysis and technology assessment for the March 2015 NOPR, DOE identified 12 technology options that would be expected to improve the AFUE of NWGFs and MHGFs, as measured by the DOE test procedure: (1) Using a condensing secondary heat exchanger; (2) increasing the heat exchanger surface area; (3) heat exchanger baffles; (4) heat exchanger surface feature improvements; (5) two-stage combustion; (6) step-modulating combustion; (7) pulse combustion; (8) low NO_X premix burners; (9) burner de-rating; (10) insulation improvements; (11) off-cycle dampers; and (12) direct venting. 80 FR 13119, 13138 (Mar. 12, 2015). In addition, DOE identified three technologies that would reduce the standby mode and off mode energy consumption of residential furnaces: (1) Low-loss linear transformer (LL–LTX); (2) switching mode power supply (SMPS); and (3) control relay for models with brushless permanent magnet (BPM) motors. *Id.*

In response to DOE's proposal, NRDC commented that DOE should consider using a control relay to completely disconnect the BPM motor and other controls when these components of a furnace are not in use. In order to address manufacturer concerns with regard to product lifetime, NRDC suggests that DOE assess whether such a technology option can be implemented in a way that minimizes the number of power cycles, such as only disconnecting the motor and controls components when the furnace has been inactive for more than 24 hours. NRDC estimates that this technology option could potentially provide 2.5 billion kWh of annual energy savings. (NRDC, No. 0134 at p. 8)

In response, DOE notes that in most furnace installations, the furnace fan is still used during periods when the furnace itself is not operating in order to provide airflow for cooling and ventilation purposes. As such, DOE believes that the potential energy savings of a technology option which disconnects power from BPM and controls components after long periods of inactivity would be small, due to the frequency for which the fan is in active mode. However, DOE welcomes further feedback as to a technology option that would disconnect the BPM motor and controls components after long periods of inactivity, especially with regard to the potential energy savings and reliability impacts of such a technology option. This is identified as issue 2 in section VII.E, "Issues on Which DOE Seeks Comment."

After identifying potential technology options for improving the efficiency of residential furnaces, DOE performed the screening analysis (see section IV.B of this SNOPR or chapter 4 of the SNOPR TSD) on these technologies to determine which could be considered further in the analysis and which should be eliminated.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

> (1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.
>
> (2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.
>
> (3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.
>
> (4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.
>
> 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties in response to the March 2015 NOPR and the September 2015 NODA pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded ("screened out") based on the screening criteria.

1. Screened-Out Technologies

DOE screened out four identified technologies: Pulse combustion, burner de-rating, low-NO_X premix burners, and control relay to depower brushless permanent magnetic motors. The rationale for screening out each these technologies is outlined below.

DOE decided to screen out the use of pulse combustion from further analysis. Pulse combustion furnaces use self-sustaining pressure waves to draw a fresh fuel-air mixture into the combustion chamber, heat it by way of compression, and then ignite it using a spark. Based on manufacturer feedback received during the manufacturer interviews conducted for the analysis for the June 2011 DFR, DOE understands that pulse combustion furnaces have had reliability and safety issues in the past, and therefore, manufacturers do not consider their use a viable option to improve efficiency. In addition, manufacturers can achieve similar or greater efficiencies through the use of other technologies that do not operate with positive pressure in the heat exchanger, such as those relying on induced draft. (In pulse combustion systems, the positive pressure in the heat exchanger could cause hazardous combustion products (*e.g.,* carbon monoxide) to leak into the home if fatigue caused the heat exchanger to breach.) For these reasons, DOE is not including pulse combustion as a technology option.

DOE also decided to screen out burner de-rating. Burner de-rating reduces the burner firing rate while maintaining the same heat exchanger geometry/surface area and fuel-air ratio, which increases the ratio of heat transfer surface area to the energy input, which increases efficiency. However, the lower energy input means that less heat is provided to the user than is provided using conventional burner firing rates, resulting in slower heating and longer operating hours and/or not enough heat available to heat the intended space. As a result of the decreased heat output of furnaces with de-rated burners, DOE has screened out burner de-rating as a technology option, as it could reduce consumer utility.

In addition, DOE is screening out low-NO_X premix burners from further analysis. Premix burners eliminate the need for secondary air in the combustion process by completely mixing heating fuel with primary air prior to ignition. This raises the overall flame temperature, which improves heat transfer and AFUE. In-shot burners that are commonly used in residential furnaces, on the other hand, cannot entrain sufficient primary air to completely premix the air and gas. As a result, premix burner design incorporates a fan to ensure sufficient and complete mixing of the air and fuel prior to combustion and does so by delivering the air to the fuel at positive pressure. To the extent of DOE's knowledge, and based on manufacturer feedback during the manufacturer interviews conducted prior to the March 2015 NOPR, low-NO_X premix burners have not yet been successfully incorporated into a residential furnace design that is widely available on the market. DOE is aware that low-NO_X premix burners have been incorporated into boilers, but boilers have significantly different heat exchangers and burners, allowing for the integration of premix burner technology in those products. Incorporating this technology into furnaces on a large scale will require further research and development due to the technical constraints imposed by current furnace burner and heat exchanger design.

Lennox commented that the screening analysis should have prevented the elimination of non-condensing furnaces from the market because these units cannot be easily replaced by condensing furnaces. Lennox argued that under a condensing furnace standard, consumers using non-condensing furnaces in cold weather could be at a safety risk if the furnace fails, due to the difficulty of replacing a non-condensing furnace with a condensing model. Therefore, Lennox believes that the potential elimination of non-condensing furnaces from the marketplace is a violation of screening criteria number 4: Adverse impacts on health or safety. (Lennox, No. 0125 at pp. 6–7)

As stated in 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b), DOE screens out a technology option from further consideration in the engineering analysis if DOE determines that the technology option itself would have "significant adverse impacts on health or safety." Although DOE recognizes that replacing a non-condensing furnace with a condensing furnace may take additional time as compared to replacing a non-condensing furnace, DOE does not believe that the amount of time is significant enough to constitute a safety issue for occupants whose furnace has failed. The additional time for replacing a non-condensing furnace with a condensing furnaces was considered in the LCC analysis (section IV.F of this SNOPR and chapter 8 of the SNOPR TSD), and DOE estimated that the maximum additional time needed for such replacement would total approximately 5 hours. DOE considered safety concerns presented by commenters responding to the March 2015 NOPR and September 2015 NODA (see section III.F.2) but determined that they were not sufficient to screen out condensing heat exchanger technology.

Among the standby and off mode technologies, DOE screened out using a control relay to depower BPM motors due to feedback received during the manufacturer interviews conducted for the residential furnaces June 2011 DFR. For this technology option, a switch is spring-loaded to a disconnected position, and can only close to allow a supply of electrical power to the BPM motor upon an inrush of current. Manufacturer interviews indicated that using a control relay to depower BPM motors could reduce the lifetime of the motors (the reason for this reduction in product lifetime is further explained in chapter 4 of the TSD). DOE believes that this reduction in lifetime would lead to a reduction in utility of the product. For this reason, DOE is not including control relays for models with brushless permanent magnet motors as a technology option, as it could reduce consumer utility.

Ingersoll Rand commented that due to a lack of manufacturer experience, implementation of SMPS as a technology option for improving furnace efficiency in standby/off mode may introduce reliability issues. Ingersoll Rand believes that when considering the amount of energy savings offered by SMPS, which Ingersoll Rand considers to be low, the potential reliability issues for consumers are not justified. (Ingersoll Rand, NOPR public meeting transcript, No. 0044 at pp. 99–100) In response, DOE considers SMPS to have reached technological maturity in other consumer products, and is not aware of any specific reasons as to why it would not be able to achieve the same level of long-term reliability in furnaces that it has reached in other products. As such, DOE considers SMPS as a technology option to reduce standby/off mode energy consumption in the analyses for this SNOPR.

Goodman commented that DOE should not consider LL–LTX as a technology option for reducing standby/off mode energy consumption. Due to what Goodman sees as currently limited market penetration, Goodman believes that manufacturers need more time to research the failure modes, repair costs, and design changes that are incurred with implementation of LL–LTX technology, and that the LCC analysis cannot currently address the repair costs associated with LL–LTX. (Goodman, No. 0135 at pp. 4–5) DOE is not aware of any specific barriers to implementation of LL–LTX as a technology option to reduce standby/off mode energy consumption. DOE believes that due to the technological similarities between LL–LTX and LTX technology, the latter of which is already commonplace in many consumer products, LL–LTX would have little difficulty achieving market acceptance in furnaces. Therefore, DOE has considered LL–LTX as a technology option to reduce standby/off mode energy consumption in this SNOPR.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 met all four screening criteria as needed to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options to improve AFUE: (1) Condensing secondary heat exchanger; (2) increased heat exchanger face area; (3) heat exchanger baffles; (4) heat exchanger surface feature improvements; (5) two-stage combustion; (6) step-modulating combustion; (7) insulation improvements; (8) off-cycle dampers; and (9) direct venting. DOE also maintained the following technology options to improve standby mode and off mode energy consumption: (1) Low-loss transformer; and (2) switching mode power supply. DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the SNOPR TSD.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer selling price (MSP) and improved NWGF and MHGF efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline product to model different levels of efficiency. The efficiency-level approach uses estimates of cost and efficiency of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products. For both NWGF and MHGF, the efficiency ranges from that of the least-efficient unit sold today (*i.e.,* the baseline efficiency level) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MSP; this relationship is referred to as a cost-efficiency curve.

DOE conducted the AFUE engineering analysis for residential furnaces in this SNOPR using a methodology similar to that which was used for the March 2015 NOPR, but with some updates which are discussed both below and in chapter 5 of the SNOPR TSD. For completeness and convenience of the reader, DOE is reiterating portions of the engineering analysis information already presented in the March 2015 NOPR. The AFUE engineering analysis for this SNOPR used a combination of the efficiency-level and reverse-engineering approaches. More specifically, DOE identified the efficiency levels for analysis and then used the reverse-engineering approach to determine both the technologies used and their associated manufacturing costs at those levels. In the residential furnace market, manufacturers may use slight variations on designs to achieve a given efficiency level. The benefit of using the efficiency-level approach is that it allows DOE to examine products at each efficiency level regardless of the specific design options that manufacturers use to achieve that level, so the analysis can account for variations in design. Using the reverse-engineering approach to estimate production cost at each efficiency level allows DOE to analyze actual models as the basis for developing the MSPs.

For the standby mode and off mode analysis conducted for this SNOPR, DOE also replicated the methodology that was used for this analysis in the March 2015 NOPR. In this analysis, DOE adopted a design option approach, which allowed for the calculation of incremental costs through the addition of specific design options to a baseline model. DOE decided on this approach because it did not have sufficient data to execute an efficiency-level analysis, as manufacturers typically do not rate or publish data on the standby mode and/or off mode energy consumption of their products. As such, DOE was not able to conduct a reverse-engineering approach due to a lack of definitive knowledge of the electrical energy consumption of products on the market. Also, the design options used to obtain higher efficiencies were composed of purchased parts, so obtaining price quotes on these electrical components was more accurate than attempting to determine their manufacturing costs via a reverse-engineering analysis.

1. Efficiency Levels

As noted above, for analysis of amended AFUE standards in this SNOPR, DOE used an efficiency-level approach in combination with a reverse-engineering approach to identify the technology options needed to reach incrementally higher efficiency levels. DOE physically tore down newly manufactured furnaces for its analysis. Prior to teardown, all of the furnaces were tested to verify their AFUE ratings and determine their standby mode and off mode power consumption (in watts). From the market analysis, DOE was able to identify the most common AFUE ratings of NWGF and MHGF on the market and used this information to select AFUE efficiency levels for analysis. After identifying AFUE efficiency levels for analysis, DOE used the reverse-engineering approach (see section IV.C.2.a) to determine the manufacturer production cost (MPC) at each AFUE efficiency level identified for analysis.

For the analysis of new standby mode and off-mode energy conservation standards, DOE used a design-option approach to identify the efficiency levels that would result from implementing certain design options for reducing power consumption in standby mode and off mode.

a. Baseline Efficiency Level and Product Characteristics

DOE selected baseline units typical of the least-efficient commercially-available residential furnaces. DOE selected baseline units as reference points for both NWGFs and MHGFs, against which it measured changes resulting from potential amended energy conservation standards. The baseline unit in each product class represents the basic characteristics of products in that class. Additional details on the selection of baseline units may be found in chapter 5 of the SNOPR TSD.

DOE uses the baseline unit for comparison in several phases of the analyses, including the engineering analysis, LCC analysis, PBP analysis, and the NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a baseline unit to the price of a unit at each higher efficiency level.

AFUE

In the analysis of amended AFUE standards, when calculating the price of a baseline furnace and comparing it to the price of units at each higher efficiency level, DOE factored in future changes to the indoor blower motor baseline design option resulting from the 2014 furnace fans final rule.[31] 79 FR 38219 (July 3, 2014), 10 CFR 430.32(y). The 2014 furnace fans final rule set new baseline efficiency levels for furnace fans requiring compliance on July 3, 2019, which include a level effectively requiring constant torque BPM motors as the minimum standard indoor blower motor technology option for NWGF units, and improved primary split capacitor (PSC) motors as the minimum standard technology option for MHGF units. As such, beginning in July 2019, constant torque BPM motors will be the baseline design feature for NWGF units, and improved PSC motors will be the baseline design feature for MHGF units. DOE has included constant torque BPM motors and improved PSC motors in the MPCs for NWGF and MHGF units, respectively. The current and expected baseline motor types are listed in Table IV.1.

TABLE IV.1—BASELINE BLOWER MOTOR TYPES

[Current and expected in 2019]

Product class	Current typical baseline blower motor type	Expected typical baseline blower motor type starting in 2019
NWGF	PSC	Constant-Torque BPM.
MHGF	PSC	Improved PSC.

Currently, the baseline indoor blower motor design option for all residential furnace types is a PSC motor. From here, the next step up is an improved PSC motor, which consumes less energy during fan operation than a standard PSC motor. As compared to improved PSC motors, BPM motors offer further efficiency improvements. BPM motors feature a completely redesigned inner drive mechanism, which significantly reduces electricity wasted as heat during fan operation. The basic type of BPM motor is a constant torque BPM motor, which accepts a specified number of torque commands from an outside control source. A second type of BPM motor is a constant airflow BPM motor, which is similar to a constant torque BPM motor, but allows for more precise operational commands. Constant airflow BPM motors accept precise airflow commands from an outside control source, which allow it to adjust the building airflow to a wide range of operational demands.

Table IV.2 presents the baseline AFUE levels identified for each product class of furnaces. The baseline AFUE levels analyzed are the same as the current federal minimum AFUE standards for furnaces, as established by the November 2007 final rule. 10 CFR 430.32(e)(1)(ii); 72 FR 65136, 65169 (Nov. 19, 2007).

TABLE IV.2—BASELINE RESIDENTIAL FURNACE AFUE EFFICIENCY LEVELS

Product class	Certified input capacity (kBtu/h)	AFUE (percent)
Non-Weatherized Gas Furnaces	≤55 kBtu/h	80
	>55 kBtu/h	80
Mobile Home Gas Furnaces	All	80

Standby/off mode

“Standby mode” and “off mode” power consumption are defined in the DOE test procedure for residential furnaces and boilers. DOE defines “standby mode” for residential furnaces and boilers as “the condition during the heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated.” (10 CFR part 430, subpart B, appendix N, section 2.8) “Off mode” for residential furnaces and boilers is defined as “the condition during the non-heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as the blowers or pumps, are activated.” (10 CFR part 430, subpart B, appendix N, section 2.6) A “seasonal off switch” is defined as “the switch on the furnace or boiler that, when activated, results in a measurable change in energy consumption between the standby and off modes.” (10 CFR part 430, subpart B, appendix N, section 2.7.)

Through reviewing product literature and discussions with manufacturers, DOE has found that furnaces generally do not have a seasonal off switch that would be used to turn the product off during the off season. Manufacturers stated that if a switch is included with a product, it is left in the on position during the non-heating season because the indoor blower motor in the furnace is needed to move air for the AC side of the home’s HVAC system and that the switch is typically used only as a service or repair switch. Rheem commented that it does not believe that energy consumption is the same for standby and off mode, but also stated that it has not rated any furnaces in the off mode. (Rheem, No. 0142 at p. 5). As previously discussed, DOE estimates that for a large majority of furnaces an off switch is not included on the unit. However, DOE notes that if a furnace does include an off switch, then the energy consumption in off mode for that furnace would be reduced below that of standby mode. Accordingly, in the analysis of standby mode and off mode energy conservation standards, DOE treated the standby mode and the off mode power consumption for residential furnaces as equal in order to be conservative. DOE requests further comment on the treatment of standby mode and off mode energy consumption (as defined by DOE) as equal. This is identified as issue 3 in section VII.E, "Issues on Which DOE Seeks Comment."

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[31] For more information on the Furnace Fans Rulemaking, see the DOE Furnace Fans Rulemaking Web page at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/41.*

For the standby mode and off-mode analysis, DOE identified baseline components as those that consume the most electricity during the operation of those modes. Because it would not be practical for DOE to test every furnace on the market to determine the baseline efficiency, and manufacturers do not currently report standby mode and off mode energy consumption, DOE "assembled" the most consumptive baseline components from the models tested to model the electrical system of a furnace with the expected maximum system standby mode and off mode power consumption observed during testing of furnaces.

In response to this approach detailed in the March 2015 NOPR, EEI commented that this method of selecting the baseline efficiency level is very conservative, and as a result, there are many units on the market which will already comply with the max-tech standby/off mode efficiency level proposed in the March 2015 NOPR. (EEI, No. 169 at p. 12) However, EEI also commented that due to potential future additions of furnace functions that consume energy in standby/off mode (*i.e.,* smart-grid applications, gas demand response, carbon monoxide monitoring, self-diagnostics, maintenance warnings, energy usage displays, remote temperature settings, methane leak detection/warnings, etc.), the future max-tech standby/off mode efficiency level may have higher energy consumption in standby/off mode than the max-tech identified by DOE. (EEI, No. 0169 at pp. 12–14)

DOE understands EEI's concern that the max-tech efficiency level identified in the March 2015 NOPR analysis does not account for additional functions that consume energy in standby/off mode that may be added to units in the future. However, DOE believes that, as EEI also commented, the conservatively-selected baseline efficiency level that DOE selected in the March 2015 NOPR may be substantially lower (*i.e.* higher power consumption) than the efficiencies of many units currently on the market today. DOE believes that the baseline used for this SNOPR allows for the future addition of furnace functions that operate in the standby/off mode, while still allowing the unit to comply with the proposed standard. Additionally, due to a lack of detailed information as to what additional functions may be added to furnaces in the future, DOE has tentatively maintained the March 2015 NOPR baseline efficiency level in this SNOPR. However, DOE seeks further detailed feedback as to anticipated furnace functions that would operate in the standby/off mode and the energy consumption of such functions in relation to the baseline efficiency in standby/off mode. This is identified as issue 4 in section VII.E, "Issues on Which DOE Seeks Comment." The components of the baseline standby mode and off-mode consumption level used in this SNOPR analysis are presented in Table IV.3.

TABLE IV.3—BASELINE STANDBY MODE AND OFF MODE POWER CONSUMPTION FOR NWGF AND MHGF

Component	Standby mode and off-mode power consumption (watts)
Transformer	4
ECM Blower Motor (includes controls)	3
Controls/Other	4
Total (watts)	11

b. Other Energy Efficiency Levels

AFUE

Table IV.4 and Table IV.5 show the efficiency levels DOE selected for analysis of amended AFUE standards for NWGF (both small and large) and MHGF, respectively, along with a description of the typical technological change at each level. The efficiency levels analyzed for both small and large NWGF in this SNOPR are the same as those which were analyzed for NWGF in the March 2015 NOPR. For MHGF, the efficiency levels analyzed in this SNOPR are the same as in the NOPR, except at the max-tech efficiency level, which is 96 percent AFUE in this SNOPR, but was 97 percent AFUE in the March 2015 NOPR. 80 FR 13120, 13141 (March 12, 2015). This change occurred because the January 2016 residential furnaces test procedure final rule amended the rounding requirements for AFUE ratings to require rounding to the nearest 0.1 percent AFUE point, rather than rounding to the nearest 1 percent AFUE point, as was required prior to the test procedure amendment. 81 FR 2627, 2638 (Jan. 15, 2016). Because the max-tech MHGF unit in the March 2015 NOPR analysis was 96.5 percent AFUE, this unit could have been rated as 97 percent AFUE under the test procedure requirements at the time of the March 2015 NOPR. (10 CFR 430.23(n) as codified on January 1, 2016) The max-tech MHGF unit at the time of the analysis for this SNOPR was still 96.5 percent AFUE, but due to the changes in rounding procedures for AFUE ratings since the March 2015 NOPR, this unit would not be able to achieve a 97 percent AFUE rating under the current DOE test procedure. As such, DOE revised the MHGF max-tech efficiency level to 96 percent AFUE in the analyses for this SNOPR.

TABLE IV.4—AFUE EFFICIENCY LEVELS FOR NON-WEATHERIZED GAS FURNACES

[Small and large]

Efficiency Level (EL)	AFUE (%)	Technology options
0—Baseline	80	Baseline.
1	90	EL0 + Secondary condensing heat exchanger.
2	92	EL1 + Increased heat exchanger area.
3	95	EL2 + Increased heat exchanger area.
4—Max-Tech	98	EL3 + Increased heat exchanger area + Step-modulating combustion + Constant-airflow BPM blower motor.

TABLE IV.5—AFUE EFFICIENCY LEVELS FOR MOBILE HOME GAS FURNACES

Efficiency level	AFUE (%)	Technology options
0—Baseline	80	Baseline.
1	92	EL0 + Secondary condensing heat exchanger.
2	95	EL1 + Increased heat exchanger area.
3—Max-Tech	96	EL2 + Increased heat exchanger area.

In addition to the technology options listed in Table IV.4 and Table IV.5, DOE considered certain enhanced design features that may be chosen for consumer comfort or to reduce electrical energy consumption during furnace operating periods. These enhancements are listed in Table IV.6.

TABLE IV.6—DESIGN FEATURES NOT DIRECTLY INCLUDED IN ANALYSIS OF AFUE EFFICIENCY LEVELS

Design feature	Baseline option	Enhanced option
NWGF Indoor Blower Motor	Constant torque brushless permanent magnet (BPM) motor*.	Constant airflow BPM motor.
MHGF Indoor Blower Motor	Improved PSC motor*	Constant torque BPM motor. Constant airflow BPM motor.
MHGF combustion system	Single-stage combustion	Two-stage combustion (includes two-stage gas valve, two-speed inducer assembly, upgraded pressure switch, and additional controls and wiring).

*The baseline design options listed for NWGF and MHGF indoor blower motors will not become effective until 2019 when the 2014 furnace fan rulemaking mandates new efficiency standards for furnace fans.

DOE research suggests that furnaces contain either PSC or BPM fan motors; PSC motors are typically available with up to 5 speeds, whereas BPM fan motors are variable-speed and typically offer higher efficiency. Within the BPM product family, fan motors are generally classified as either constant torque or constant airflow. The construction of these motors is similar, but the more sophisticated electronics on constant airflow fan motors allow a wider fan modulation range and can be programmed to maintain a desired airflow across a wide range of static pressures. DOE research suggests that systems with constant airflow BPM motors can better accommodate varying building conditions than constant torque BPM and PSC motors, and may be chosen for enhanced consumer comfort. Constant airflow BPM motors are also the current standard motor type at the max-tech AFUE level for NWGF units.

The combustion system baseline design feature for MHGF is a single-stage combustion system, which includes a single-stage gas valve and a single-speed inducer fan assembly. The hysteresis of the thermostat controlling the furnace may cause this system to over- and undershoot the target temperature, which is uncomfortable for the mobile home occupants and consumes more energy than is necessary. To improve comfort and potentially save energy, a two-stage combustion system can be used in place of a single-stage combustion system. A two-stage combustion system allows a suitable thermostat to vary the heating input in stages, potentially resulting in better actual building versus target temperature performance. As discussed in the 2014 furnace fans final rule, the furnace fans energy conservation standards have a mandatory compliance date of July 3, 2019. Thus, manufacturers will likely incorporate two-stage combustion into the designs of most NWGFs by 2019 in order to comply with the furnace fans standards. 79 FR 38129, 38184, 38201 (July 3, 2014). Therefore, for the purpose of its engineering analysis in the March 2015 NOPR and in this SNOPR, DOE assumed that a majority of furnaces would switch to two-stage combustion in order to comply with the furnace fan standard. As such, DOE included two-stage combustion as a standard design for NWGF in this analysis.

Two-stage combustion technology was also one of the technology options DOE considered in the engineering analysis for improving AFUE. However, depending on the product, this option appears to offer a minor to negligible improvement of AFUE. Based on market analysis, DOE determined that two-stage combustion is a common design feature in residential furnaces. DOE research suggests that two-stage combustion is currently primarily offered to consumers as a comfort feature rather than for its efficiency benefits.

Standby/Off Mode

Table IV.7 shows the efficiency levels DOE selected for the analysis of standby mode and off mode standards in this SNOPR, along with a description of the design options used to achieve each efficiency level above baseline. The baseline technology options include a linear power supply and a 40VA linear transformer (LTX). Technology options that may be used to achieve efficiency levels above baseline include a low-loss LTX (LL–LTX) and a switching mode power supply (SMPS).

TABLE IV.7—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR NON-WEATHERIZED GAS AND MOBILE HOME GAS FURNACES

Efficiency Level EL	Standby mode and off mode power consumption (W)	Technology options
0—Baseline	11	Linear Power Supply with 40VA LTX.
1	9.5	Linear Power Supply with 40VA LL–LTX.
2	9.2	SMPS with 20VA LTX.
3—Max-Tech	8.5	SMPS with 20VA LL–LTX.

In response to the analysis DOE presented in the March 2015 NOPR for standby/off mode efficiency standards, EEI commented that the Nielsen study referenced by DOE in Chapter 3 (on page 3–38) of the March 2015 NOPR TSD states that standard 2–3 watt transformers have no load losses ranging between 0.5 and 1.5 watts, and therefore EEI wanted clarification on how DOE determined in the March 2015 NOPR that transitioning from a conventional linear transformer to a low-loss linear transformer (LL–LTX) could save 1.5 watts. (EEI, No. 0160 at p. 14) DOE notes that, as discussed in the Nielsen study, these "standard 2–3 watt transformers" feature a much lower capacity than the transformers typically used in residential furnaces. DOE's teardown analysis (see section IV.C.2) and review of product literature indicated that furnaces typically ship with much larger 40VA transformers. DOE estimates that larger 40 VA transformers used in residential furnaces will have standby losses of approximately two watts. The Nielsen study concludes that an LL–LTX standby losses are about 25 percent of the losses of a LTX.[32] As such, an LL–LTX will consume approximately 25 percent of the two watts consumed in standby mode by a LTX, which for a 40 VA LL–LTX is 0.5 watts, thus reducing LTX transformer losses by 1.5 watts. Therefore, DOE has maintained in the SNOPR standby/off mode analysis that the implementation of an LL–LTX at EL1 will result in a 1.5 watt reduction in standby losses relative to the baseline efficiency level. Similarly, at EL3 a 20 VA LL–LTX will consume approximately 25 percent of the one watt consumed at EL2 by a 20 VA LTX. As such, the 20 VA LL–LTX at EL3 will consume approximately 0.25 watts, reducing 20 VA LTX transformer losses by 0.75 watts at EL2.

EEI also commented that the margin of error for the equipment used to test the standby/off mode energy consumption of furnaces may be larger than the incremental reduction in standby losses between some efficiency levels. As a result, EEI stated that some units would not experience a measurable reduction in standby losses as a result of implementing some of the design options. (EEI, NOPR Public Meeting Transcript, No. 0044 at pp. 94–95) DOE notes that the equipment used to test the standby/off mode energy consumption of the furnaces in this analysis has a published accuracy of within 0.1 percent (see Chapter 5 of the SNOPR TSD for further information). Between the efficiency levels analyzed, the smallest incremental decrease in standby/off mode energy consumption (which occurs between EL1 and EL2) is 0.3 watts. This is significantly larger than both of the 0.1 percent margins of error for EL1 and EL2, which are 0.0095 watts and 0.0092 watts, respectively. Therefore, DOE believes that a reduction in standby losses at each efficiency level would be captured by current test methods, because the incremental reductions in standby losses are outside of the margin of error of testing equipment.

In addition, EEI questioned how implementation of an LL–LTX at EL1 offers 1.5 watts of energy savings and implementation of a SMPS at EL2 offers 1.8 watts of energy savings, but implementation of both of these design options at EL3 only offers 2.5 watts of energy savings, rather than the sum of the savings at EL1 and EL2, which would be 3.3 watts of savings. (EEI, No. 0169 at p. 13) In response, DOE clarifies that the implementation of a SMPS provides the proper voltage reduction needed for the furnace control board, but a smaller AC–AC transformer is still required to provide 24VAC power for thermostats. DOE estimated that a 20VA transformer would be sufficient to power thermostats. As such, the required capacity for a LL–LTX implemented in tandem with a SMPS at EL3 is smaller than that of a LL–LTX implemented with a linear power supply at EL1 (20VA vs. 40VA, respectively, as shown in Table IV.7). Because the transformer at EL3 has half the capacity of the transformer at EL1, the potential energy savings of switching to a LL–LTX at EL3 is lower than the savings provided at EL1 (see prior discussion).

EEI commented that due to the low wattage differences between each efficiency level, implementing the design options listed (see Table IV.7) to achieve efficiency levels above baseline may not always result in a reduction in energy consumption. EEI suggested that, due to the potential range of standby/off mode energy consumption values for units that incorporate any of these given design options, units could potentially have a higher energy usage than units which incorporate a design option corresponding with a lower efficiency level (corresponding efficiency levels also listed in Table IV.7).

In response, DOE understands that units which incorporate any of the design options listed in Table IV.7 will have a range of energy consumption values which may differ from the corresponding energy consumption value listed in the table.

As mentioned previously, DOE developed the baseline efficiency level as a sum of the highest energy consumption measurements it obtained by testing the various components that consume standby power in furnaces. The specific energy consumption values associated with each incremental efficiency levels were then developed by reducing the baseline energy consumption by the reduction in energy consumption provided by the particular design option implemented at that efficiency level. Because of the conservative nature by which the baseline energy consumption value was developed, DOE expects that many units already achieve standby/off mode energy usage levels which are lower than the current baseline. DOE further expects that those units that do not currently meet the proposed efficiency level could do so via implementation of the listed design options corresponding with that level in Table IV.7.

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[32] N. Nielsen. "Loss Optimizing Low Power 50 Hz Transformers Intended for AC/DC Standby Power Supplies." *Applied Power Electronics Conference and Exposition, 2004.* IEEE, pp. 420–25, September 9, 2004.

Goodman commented that to properly accommodate the LL–LTX design option (which is used at EL1 and EL3), it may be necessary to redesign the furnace platform, because LL–LTX are larger than baseline LTX. (Goodman, No. 0135 at pp. 4–5) In the engineering analyses for this SNOPR, DOE has not accounted for any particular design changes to the furnace platform as a requirement in order to implement an LL–LTX. Every furnace reverse-engineered by DOE appeared to have room for a larger transformer. DOE estimates that the 20VA LL–LTX transformer that could be used (along with other components) to reach EL3 is not significantly larger than the current 40VA LTX typically used in baseline designs. DOE has reverse-engineered a number of control boards in space-constrained appliances where the power supplies made a transition from a linear power supply to SMPS without any changes to the size of the printed circuit board. DOE welcomes further feedback as to any design modifications which may be necessary in order to integrate LL–LTX into furnaces. This is identified as issue 5 in section VII.E, "Issues on Which DOE Seeks Comment."

DOE requests further comment on the efficiency levels analyzed for standby mode and off mode. In particular, DOE welcomes any additional feedback as to the technological feasibility of achieving the proposed max-tech standby/off mode energy consumption value of 8.5 watts. This is identified as issue 6 in section VII.E, "Issues on Which DOE Seeks Comment."

2. Cost-Assessment Methodology

At the start of the engineering analysis, DOE identified the energy efficiency levels associated with residential furnaces on the market using data gathered in the market assessment. DOE also identified the technologies and features that are typically incorporated into products at the baseline level and at the various energy efficiency levels analyzed above the baseline. Next, DOE selected products for physical teardown analysis having characteristics of typical products on the market at the representative input capacity. DOE gathered information by performing a physical teardown analysis (see section IV.C.2.a) to create detailed BOMs, which included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as inputs to calculate the MPC for products at various efficiency levels spanning the full range of efficiencies from the baseline to the maximum technology achievable ("max-tech") level.

During the development of the engineering analysis for the March 2015 NOPR, DOE held interviews with manufacturers to gain insight into the residential furnace industry, and to request feedback on the engineering analysis. DOE used the information gathered from these interviews, along with the information obtained through the teardown analysis, to refine its MPC estimates for this rulemaking. Next, DOE derived manufacturer markups using publicly-available residential furnace industry financial data in conjunction with manufacturers' feedback. The markups were used to convert the MPCs into MSPs. Further information on the analytical methodology is presented in the subsections below. For additional detail, see chapter 5 of the SNOPR TSD.

a. Teardown Analysis

To assemble BOMs and to calculate the manufacturing costs for the different components in residential furnaces, DOE disassembled multiple units into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process referred to as a "physical teardown." Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method, called a "virtual teardown," which examines published manufacturer catalogs and supplementary component data to estimate the major physical differences between a product that was physically disassembled and a similar product that was not. For supplementary virtual teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information, such as manufacturer catalogs. For this SNOPR, data from a total of 77 physical and virtual teardowns of residential furnaces were used to calculate industry MPCs in the engineering analysis.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their products, along with the efficiency levels associated with each technology or combination of technologies. The end result of each teardown is a structured BOM, which DOE developed for each of the physical and virtual teardowns. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies), and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used as inputs to calculate the MPC for each product that was torn down. The MPCs resulting from the teardowns were then used to develop an industry average MPC for each efficiency level of each product class analyzed. For more detailed information on DOE's teardown analysis, see Chapter chapter 5 of the SNOPR TSD.

In response to the NOPR, DOE received multiple comments suggesting that the engineering analysis be based on furnace pricing currently seen in the market, rather than teardowns, due to the fact that the inputs to the teardown analysis are not made publicly available. APGA expressed concern with the level of transparency given that DOE does not disclose the product specific details obtained through the teardown analysis. APGA stated that without disclosure of the product specific details from the teardown analysis, it is not possible to verify that its outputs are accurate. Further, APGA stated that DOE should not use inputs to its analysis that it cannot make public, and should examine the real world prices of furnaces as a way of determining consumer prices. (APGA, No. 0106 at pp. 32–34) Laclede commented that its employees solicited price bids for installation of condensing furnaces in their homes, and found that the incremental installed costs were higher than those determined by DOE's analysis. Laclede stated that using this type of methodology to determine costs is better founded than the teardown methodology used by DOE. (Laclede, No. 0141 at pp. 24–27) Ingersoll Rand inquired as to whether DOE compares the manufacturing costs generated by the teardown analysis with the prices that DOE pays to purchase the furnaces which it tears down. (Ingersoll Rand, NOPR Public Meeting Transcript, No. 0044 at p. 5960)

DOE notes that the sales prices of furnaces currently seen in the market place, which include both an MPC and various markups applied through the distribution chain, are not necessarily indicative of what the sales prices of those furnaces would be following the implementation of a more stringent energy conservation standard. At a given efficiency level, the furnace MPC depends in part on the production volume. At any given efficiency level above the current baseline, the industry-aggregated MPC for furnaces at that level may be high relative to what it would be under a more stringent standard, due to the increase in production volume (and thus, improved economies of scale and purchasing power for furnace components) which would occur at that level if a federal standard made it the new baseline efficiency. Under a more stringent standard, the markups incorporated into the sales price may change relative to current markups. This could occur due to the changes in market forces caused by an increase in demand for furnaces at that higher efficiency, as well as changes in the production and installation costs of furnaces at that level resulting from higher production volumes, greater experience with condensing furnace installations, and a multitude of other factors. As higher efficiency furnaces become a commodity rather than a premium product, high efficiency furnaces may not command the same markups that can be applied to such products presently. Therefore, basing the engineering analysis on prices of furnaces as currently seen in the market place would be a less accurate method of estimating future furnace prices following an amended standard. It is for these reasons that DOE conducts interviews with manufacturers under non-disclosure agreements (NDAs) to determine if the MPCs developed by the analysis reflect the industry average cost rather than current sales prices. Because the cost estimation methodology uses data supplied by manufacturers under the NDAs (such as raw material and purchased part prices), the resulting individual model cost estimates themselves cannot be published.

Stakeholders also suggested that DOE take action to improve the transparency of the engineering analysis by releasing certain information currently not available within the public domain. AGA requested that all information used as inputs to the development of manufacturing costs be made publicly available so that its validity can be assessed, emphasizing its view that MPC calculations are foundational to the entire analytical process. (AGA, NOPR Public Meeting Transcript, No. 0044 at pp. 73–74) Similarly, Laclede commented that it would like access to the BOM spreadsheets used in the engineering analysis in order to determine how accurate the manufacturer cost calculations are. (Laclede, NOPR Public Meeting Transcript, No. 0044, at pp. 71–72) However, Rheem objected to DOE publishing any information on the manufacturing costs of Rheem's units. Further, Rheem commented that manufacturers in general will object to having a BOM from a complete teardown analysis of their product(s) available to the public. (Rheem, NOPR Public Meeting Transcript, No. 0044, at pp. 74–75).

DOE acknowledges both AGA and Laclede's concern about the public availability of the information that is derived from the teardown analysis. However, DOE also understands Rheem's comment that furnace manufacturers would object to having any sensitive information related to the design of their products being released into the public domain. Additionally, DOE notes that all manufacturers that participated in manufacturer interviews had access to DOE's MPC estimates for models they manufacture that were torn down, as well as the raw material and purchased part price data underlying the MPC estimates for those models. These discussions were covered by NDAs to allow manufacturers to submit confidential data and to comment freely on the inputs into the DOE analysis as well as the results. The MPCs presented herein take into account this feedback from manufacturers.

DOE's treatment of confidential business information is governed by the Freedom of Information Act (FOIA) and 10 CFR 1004.11. (5 U.S.C. 552(b)(4)) While DOE is responsible for making the final determination whether to disclose such information contained in requested documents, DOE will consider the submitter's views in making its determination. (10 CFR 1004.11(a),(c)) Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. (10 CFR 429.7(c)(2)) For additional discussion of confidential business information, see the Confidential Business Information Discussion below.

In the present case, as is generally the case in appliance standards rulemakings, manufacturer and product specific data is presented in aggregate. Given the potential for competitive harm, data is not released outside the aggregated form to DOE or its National Labs. The BOMs used to estimate the industry-aggregate MPCs are developed by a DOE contractor and are not provided to DOE; DOE only receives the industry-aggregate MPCs from its contractor for use in its analyses. This approach allows manufacturers to provide feedback under NDA, improving the quality of the analysis.

More information regarding details on the teardown analysis can be found in chapter 5 of the SNOPR TSD.

b. Cost Estimation Method

The costs of individual models are estimated using the content of the BOMs (*i.e.* materials, fabrication, labor, and all other aspects that make up a production facility) to generate MPCs. These MPCs hence include overhead and depreciation, for example. DOE collected information on labor rates, tooling costs, raw material prices, and other factors as inputs into the cost estimates. For purchased parts, DOE estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For fabricated parts, the prices of raw metal materials'[33] (*e.g.*, tube, sheet metal) are estimated on the basis of 5-year averages (from 2010 to 2015). The cost of transforming the intermediate materials into finished parts is estimated based on current industry pricing.[34]

c. Manufacturing Production Costs

In estimating the MPC, DOE took into account the various furnace design enhancements offered for consumer comfort or to reduce electrical energy consumption during furnace operating periods (see Table IV.6 in section IV.C.1.b of this document). In order to accommodate these additional design features into the MPC estimates, DOE calculated MPC estimates both with and without these added design features. DOE estimated the MPC at each efficiency level considered for each product class, from the baseline through the max-tech and then calculated the percentages attributable to each cost category (*i.e.*, materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the manufacturer impact analysis (MIA) (see section IV.J).

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[33] American Metals Market, available at *http://www.amm.com/*.

[34] U.S. Department of Labor, Bureau of Labor Statistics, Produce Price Indices, available at *http://www.bls.gov/ppi/*.

All of the furnaces torn down during the teardown analysis used PSC indoor blower motors, except for at the max-tech efficiency level, where constant airflow BPM motors were used. Constant torque BPM indoor blower motors were considered the baseline design for NWGF units, because the July 2014 furnace fans final rule set a level[35] at which manufacturers are likely to incorporate constant torque BPM indoor blower motors into NWGFs before the compliance date of amended furnace standards resulting from today's rulemaking (2022), the 2014 furnace fan final rule compliance date of July 3, 2019. (10 CFR 430.32(y)). Similarly, improved PSC indoor blower motors were considered as the baseline design feature for MHGF units as a result of the requirements set in the 2014 furnace fans rulemaking.[35] 79 FR 38129, 38151 (July 3, 2014). DOE used the results of the furnace fans rulemaking to calculate the increase in furnace MPC needed to accommodate constant torque BPM and improved PSC indoor blower motors into NWGF and MHGF units, respectively, in place of the PSC motors present in the tear down units. In addition, DOE considered the increase in MPC resulting from the implementation of a constant airflow BPM indoor blower motor. Motor type was assigned in the LCC analysis based on the market penetration of each type of motor at different efficiency levels. At the max-tech efficiency level for NWGF, DOE determined that constant airflow BPM motors are a required technology option. As such, the incremental MPC changes of using a constant airflow BPM indoor blower motor in place of a PSC motor were included in the MPC for NWGF at the max-tech AFUE level.

PG&E commented that it found the language regarding the costs of BPM motor technology in chapter 5 of the NOPR TSD to be confusing, and that its interpretation of DOE's analyses is that no incremental PSC to BPM motor costs were applied in the residential furnace NOPR analyses. (PG&E, No. 0153 at pp. 8–9) ASAP expressed the same confusion as PG&E with regard to the incremental costs of a BPM versus PSC motor, and pointed to PG&E's comment in its own comment filings. (ASAP No. 0154 at p. 3) DOE clarifies that the additional costs of implementing constant torque BPM motor technology in place of PSC motor technology were included and based on the results of the engineering analysis performed in the July 2014 furnace fans rulemaking. See chapter 5 of the SNOPR TSD for further information.

For the purpose of its engineering analysis in this SNOPR (and in the March 2015 NOPR) DOE expects that, in light of the July 2014 furnace fan final rule, manufacturers will incorporate two-stage combustion technology into NWGF design in order to comply with the furnace fan standard. DOE therefore developed a single cost adder for two-stage combustion that applies to the MPCs for all furnace input capacities and efficiency levels. The cost to change from a single-stage to a two-stage combustion system includes the cost of a two-stage gas valve, a two-speed inducer assembly, upgraded pressure switch/tubing assembly, and additional controls and wiring; these costs are estimated to be constant across input capacities and efficiency levels.

In response to the March 2015 NOPR, Carrier commented that it believes the costs of a two-stage gas valve, two-stage inducer, additional pressure switch, deluxe control board, wiring harness, and pressure switch tubing were not included in the cost adder for two-stage combustion. Carrier also commented that it believes the value of the two-stage combustion adder was not mentioned anywhere by DOE. (Carrier, No. 0116, at pp. 6–7) DOE included the components that Carrier identified in its comments in the two-stage combustion adder, as discussed in section 5.8.2 of the March 2015 NOPR TSD.

Goodman commented that the efficiency requirements promulgated by the furnace fans rule can be achieved by using single-stage combustion, and do not necessitate the use of two-stage combustion, as is currently implemented in the analysis. (Goodman, No. 0135, at p. 7) Based on the engineering analysis performed for the furnace fans rule, DOE estimates that a minority of NWGF designs would be able to achieve the new furnace fan efficiency standards by using a constant-torque BPM motor while still using single-stage combustion technology. However, DOE had limited quantitative data to use in the March 2015 NOPR and this SNOPR that detailed what portion of furnace designs would be capable of achieving the new standards without transitioning from single-stage to two-stage combustion. As such, in this SNOPR DOE has continued to apply a two-stage combustion adder to the MPCs for all units at the 80 AFUE though 95 AFUE efficiency levels for NWGFs. DOE requests comment as to what percentage of NWGFs may be capable of achieving the efficiency levels promulgated by the furnace fans rule via implementation of a constant-torque BPM motor with single-stage combustion technology, rather than two-stage combustion technology. This is identified as issue 7 in section VII.E, "Issues on Which DOE Seeks Comment."

Multiple stakeholders commented on the accuracy of the incremental differences between the baseline MPC (for a non-condensing furnace) and the MPCs for higher efficiency levels (condensing furnaces), as presented in the March 2015 NOPR. APGA commented that it found it counter-intuitive for the MPC of a baseline furnace to increase substantially between the June 2011 DFR and March 2015 NOPR, while the MPCs for condensing furnaces increased by what they regard as a 'very minor' amount. (APGA, No. 0106, at pp. 33–34) Both AHRI and Lennox commented that a survey of AHRI member manufacturers demonstrate that the incremental MPCs for higher efficiency levels (relative to baseline) estimated by DOE in the March 2015 NOPR are between 35 percent and 45 percent lower than the actual incremental MPCs relative to baseline that the industry sees, and that the actual costs themselves (not the incremental costs) are approximately 10 percent lower than the actual costs faced by industry. AHRI supplemented these comments with aggregated MPCs for each efficiency level, which were developed based on feedback from furnace manufacturers that are AHRI members. (AHRI, No. 0159 at pp. 48–49; Lennox, No. 0125 at p. 13) Similarly, Ingersoll Rand commented in response to the September 2015 NODA that the MPC for 92 percent AFUE furnaces is likely underestimated. (Ingersoll Rand, No. 0182 at p. 3) NiSource stated that according to information compiled by AGA, the initial purchase price of a condensing furnace is $300 to $700 more than a non-condensing one. (NiSource, No. 0127 at p. 3) Metropolitan Utilities District stated that DOE's product prices derived from a teardown analysis do not agree with actual market pricing as noted in the

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[35] The Furnace Fans rule set a mandatory fan energy rating (FER) of .044*Qmax + 182 for NWGF units, .071*Qmax + 222 for non-condensing MHGF units, and .071*Qmax + 240 for condensing MHGF units, where Qmax equals the airflow through the furnace at the maximum airflow-control setting operating point. For more information, see the furnace fans rulemaking Web page at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/41.*

GTI report.[36] (Metropolitan Utilities District, No. 0144 at p. 1)

In the March 2015 NOPR analysis, DOE calculated the incremental difference between the baseline efficiency level (80 percent AFUE) and EL1 (90 percent AFUE) for NWGFs to be $83 (in 2013$). 80 FR 13120, 13144 (March 12, 2015). In the analysis conducted for this SNOPR, DOE conducted additional teardowns and updated its database of component and material prices for furnaces to account for market changes through December 2015 and provided results in 2015$. This data update from 2013 data to 2015 data, in addition to other refinements of the cost estimation methodology (described in chapter 5 of the SNOPR TSD), resulted in the incremental MPC between baseline and EL1 increasing to $105 (in 2015$). After accounting for inflation, this difference represents a 25-percent increase in the incremental manufacturing cost of a condensing furnace, relative to a non-condensing unit. This change in the incremental MPC aligns with the stakeholder feedback. However, this 25-percent increase in the incremental MPC (from 80 to 90-percent AFUE) between the March 2015 NOPR and this SNOPR analysis is still lower than the 35-percent to 40-percent deviation AHRI reported between the March 2015 NOPR incremental MPCs and the true incremental MPCs in industry. This variation between the results of DOE's analysis and AHRI's estimates is likely due to the AHRI-estimated industry MPCs being based on current production costs, whereas DOE estimated MPCs for a hypothetical case where the standard is at the analyzed level (*e.g.,* a condensing level such as 90 percent AFUE). Thus, the standards case production volumes would be higher than current production volumes for a given efficiency level and could explain the discrepancy between the incremental MPCs estimated by AHRI and the incremental MPCs estimated by DOE in the engineering analysis for this SNOPR. DOE welcomes additional feedback on the MPCs and incremental MPCs presented in this SNOPR. This is identified as issue 8 in section VII.E, "Issues on Which DOE Seeks Comment."

Table IV.8 and Table IV.9 present DOE's estimates of the MPCs by AFUE efficiency level at the representative input capacity (80 kBtu/h) for both the NWGF and MHGF furnaces in this rulemaking. The MPCs presented incorporate the appropriate design characteristics of NWGFs and MHGFs at each efficiency level. These design characteristics include a single-stage gas valve (and corresponding single-stage components) for all MHGF efficiency levels, a two-stage gas valve (and corresponding components) for all NWGF levels (except for the max-tech level, which incorporates a fully modulating (or "step modulating") design), a constant-torque BPM blower motor for NWGF (except for the max-tech level, where the blower motor is a constant-airflow BPM motor), and an improved PSC blower motor for all MHGF efficiency levels. Further discussion of the MPCs that incorporate other design options (*e.g.,* constant-airflow BPM motors) is included in chapter 5 of the TSD.

TABLE IV.8—MANUFACTURER PRODUCTION COST FOR NON-WEATHERIZED GAS FURNACES

Efficiency level	Efficiency level (AFUE) (%)	MPC* (2015$)	Incremental cost above baseline (2015$)
Baseline	80	321	
EL1	90	426	105
EL2	92	449	127
EL3	95	497	176
EL4	98	601	280

*The MPCs for the NWGF efficiency levels from Baseline through EL3 include two-stage combustion and incorporation of a constant-torque BPM indoor blower motor. DOE has determined that NWGFs at EL4 incorporate modulating operation and a constant-airflow BPM blower motor.

TABLE IV.9—MANUFACTURER PRODUCTION COST FOR MOBILE HOME GAS FURNACES

Efficiency level	Efficiency level (AFUE) (%)	MPC* (2015$)	Incremental cost above baseline (2015$)
Baseline	80	285	
EL1	92	379	94
EL2	95	428	143
EL3	96	454	169

*The MPCs for all MHGF efficiency levels include single-stage combustion and incorporation of an improved PSC indoor blower motor.

Table IV.10 presents DOE's estimates of the incremental MPCs of each standby/off mode efficiency level for this rulemaking, relative to the baseline efficiency level.

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[36] MUD is referring to the report titled "Gas Technology Institute—Fuel Switching Study", located at *https://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0011.*

TABLE IV.10—INCREMENTAL MANUFACTURER PRODUCTION COST FOR NON-WEATHERIZED GAS AND MOBILE HOME GAS FURNACES STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	Incremental MPC (2015$)
Baseline	11	0
EL1	9.5	1.02
EL2	9.2	9.19
EL3	8.5	9.85

Chapter 5 of the SNOPR TSD presents more information regarding the development of DOE's estimates of the MPCs for this rulemaking.

d. Cost-Efficiency Relationship

DOE created cost-efficiency curves representing the cost-efficiency relationships for the product classes that it examined (*i.e.*, small and large NWGFs, and MHGFs). To develop the cost-efficiency relationships for NWGFs at the representative capacity (80 kBtu/h), DOE calculated a market-share weighted average MPC for each efficiency level analyzed, based on the units torn down at that efficiency level. As discussed in section IV.C.2.a, DOE also performed virtual teardowns of units at input capacities other than the representative input capacity. These virtual teardowns allowed DOE to develop cost-efficiency curves for NWGF at different input capacities. These cost-efficiency curves were then used in the downstream analyses. The cost-efficiency curves developed for input capacities other than the representative input capacity are presented in chapter 5 of the SNOPR TSD. For MHGFs, DOE compared both MHGF and NWGF teardowns produced by a common manufacturer, in order to determine the typical design differences between the two product classes. Using this information, DOE then developed cost adders which it applied to the NWGF MPCs, in order to estimate the MPCs of MHGFs at each of the MHGF efficiency levels. Additional details on how DOE developed the cost-efficiency relationships and related results are available in chapter 5 of the SNOPR TSD.

The results indicate that cost-efficiency relationships are nonlinear. The cost increase between the non-condensing (80 percent AFUE) and condensing (90 percent AFUE) efficiency levels is due to the addition a secondary heat exchanger, and so there is a large step in both AFUE and MPC. For NWGFs, a significant cost increase also occurs between the 95 percent and 98 percent AFUE levels due to the addition of modulating combustion components paired with a constant airflow BPM indoor blower motor at 98 percent AFUE. However, the ratio of the incremental increase in MPC to incremental increase in AFUE (*i.e.* the slope of the cost-efficiency curve) always increases with AFUE.

e. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting MSP is the price that DOE research suggests the manufacturer can sell a given unit into marketplace under a standards scenario. To meet new or amended energy conservation standards, manufacturers typically redesign their baseline products. These design changes typically increase MPCs relative to those of previous baseline MPCs. Depending on the competitive environment for these particular products, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to consumers in the form of higher purchase prices. As production costs increase, manufacturers may also incur additional overhead (*e.g.*, warranty costs). The MSP is typically high enough so that the manufacturer can recover the full cost of the product (*i.e.* full production and non-production costs) and yield a profit.

The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will have greater difficulty recovering their investments, product conversion costs, and/or incremental MPCs.

To calculate the manufacturer markups, DOE used 10–K reports [37] submitted to the U.S. Securities and Exchange Commission (SEC) by six publicly-owned residential furnace manufacturing companies. The financial figures necessary for calculating the manufacturer markup are net sales, costs of sales, and gross profit. For furnaces, DOE averaged the financial figures spanning the years 2009 to 2013 in order to calculate the manufacturer markups. DOE used this approach because amended standards may reduce product differentiation opportunities for manufacturers and may hence reduce markup opportunities as well. DOE acknowledges that numerous residential furnace manufacturers are privately-held companies and do not file SEC 10–K reports. In addition, while the publicly-owned companies file SEC 10–K reports, the financial information summarized may not be exclusively for the residential furnace portion of their business and can also include financial information from other product sectors, whose margins could be quite different from the residential furnace industries. DOE discussed the manufacturer markup with manufacturers during interviews, and used product specific feedback on market share, markups and cost structure from manufacturers to adjust the markup initially calculated through review of SEC 10–K reports. See chapter 12 of the SNOPR TSD for more details about the manufacturer markup calculation.

f. Manufacturer Interviews

Throughout the rulemaking process, DOE has sought and continues to seek feedback and insight from interested parties that would improve the information used in its analyses. DOE interviewed NWGF and MHGF manufacturers as a part of the NOPR manufacturer impact analysis (see section IV.J). During the interviews, DOE sought feedback on all aspects of its analyses for residential furnaces. DOE discussed the analytical assumptions and estimates, cost estimation method, and cost-efficiency curves with residential furnace manufacturers. DOE considered all the information manufacturers provided while refining its cost estimates (and underlying data) and analytical assumptions. In order to avoid disclosing sensitive information about individual manufacturers' products or manufacturing processes, DOE incorporated equipment and manufacturing process figures into the analysis as averages. Additional information on manufacturer interviews can be found in chapter 12 of the TSD.

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[37] U.S. Securities and Exchange Commission, Annual 10–K Reports (various years between 2009 and 2013), available at *http://sec.gov*.

3. Electric Furnaces

In addition to NWGFs and MHGFs, DOE also performed an engineering analysis to estimate the MPCs of electric furnaces. This analysis was performed to develop accurate electric furnace cost data as an input to the product switching analysis (see section IV.F.9 for additional information). To estimate the MPCs of electric furnaces, DOE used information obtained from the teardowns of three modular blower units, as well as a teardown of an electric heat kit assembly, which were all originally used as inputs to the engineering analysis performed for the 2014 furnace fans rulemaking.[38]

The MPCs of electric furnaces were developed by calculating a market share-weighted MPC of the three modular blower units that were torn down, and then adding the MPC of the electric heat kit to the market share-weighted modular blower MPC. The MPC of the electric heat kit was scaled appropriately in order to approximate the MPCs of different input capacity electric furnaces. Similar to the engineering analysis performed for NWGFs, DOE estimated the MPCs of electric furnaces at input capacities of 60, 80, 100, and 120 kBtu/h. These MPCs are presented below in Table IV.11.

TABLE IV.11—ELECTRIC FURNACE MPCS

Input capacity (kBtu/h)	MPC
60	$239
80	261
100	270
120	293

Further details regarding the methodology used to estimate electric furnace MPCs are provided in chapter 5 of the SNOPR TSD. DOE seeks comment on its methodology and estimates for electric furnace MPCs and this is identified as issue 9 in section VII.E "Issues on Which DOE Seeks Comment."

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* for wholesalers, mechanical contractors, general contractors, mobile home manufacturers, and mobile home dealers) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the MIA. The markups are multipliers that represent increases above the MSP for NWGFs and MHGFs. DOE develops baseline and incremental markups for each step in the distribution chain. The baseline markups are applied to the price of products with baseline efficiency to determine the consumer purchase cost. Likewise, the incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase) to determine the change in the consumer price for higher-efficiency products compared to baseline products. Before developing markups, DOE defines key market participants and identifies distribution channels.

Commenting on the March 2015 NOPR, AHRI stated that DOE's continued reliance on the incremental markup concept is unsupported. AHRI stated that: (1) The minimal empirical data cited in support of DOE's assumption either is irrelevant or tends to support the presence of consistent gross margins; (2) AHRI has supplied interview data with distributors and wholesalers, interview data with contractors, and survey data of contractors, all of which directly contradict DOE's assumption; and (3) DOE has not supplied any references to any empirical data that shows a difference in markups on pre- and post-standard products. (AHRI, No. 0159 at pp. 39) Rheem and HARDI agreed with AHRI. (Rheem, No. 0142 at pp. 3–4; HARDI, No. 0131 at p. 2) Goodman stated that the argument for incremental markups depends on the proposition that firms in aggregate are constrained in some manner so that they cannot earn profits above their normal cost of capital. (Goodman, No. 0135 at pp. 3–4)

DOE's incremental markup approach is based on the widely-accepted economic view that prices closely reflect marginal costs in perfectly competitive markets or in markets with a limited degree of concentration. According to microeconomic theory of firm behavior, an incremental cost may have a markup that is different from the markup on the baseline product. DOE is not aware of any representative empirical observations of markups over time in the air conditioning or heating equipment industries, except at an aggregate level. DOE evaluated time series margins and price data from three industries that experienced rapidly changing input prices—the LCD television retail market, the U.S. oil and gasoline market, and the U.S. housing market. The results indicate that dollar margins vary across different markets to reflect changes in input price, but the percent margins do not remain fixed over time in any of these industries. Appendix 6B in the SNOPR TSD describes DOE's findings. Regarding the interview data with distributors and contractors, and the survey of contractors, DOE has reservations about the applicability of these data, as discussed below.

PHCC, ACCA, and AHRI stated that based on their survey of contractors on markup practices, contractors do not use different markups before and after standards. PHCC, ACCA, and AHRI stated that if anything, contractors report that markups increased. (PHCC, No. 0136 at p. 9; ACCA, No. 0158–2 at p. 9; AHRI, No. 0159 at pp. 38) DOE acknowledges that the survey provides additional insight into contractor markup practices, but DOE found some deficiencies in the way the questions were phrased and presented to contractors. Particularly, the two markup-related questions appear to emphasize the short-term impact of a new standard on pricing strategy, and the limited choices provided under each question do not address the dynamics between short-term and long-term profitability in a fairly competitive market like the HVAC construction industry. In contrast to the survey responses, an in-depth interview with an HVAC consultant conducted by DOE indicates that while HVAC contractors aim to maintain fixed-percentage markups, eventually they will likely either have to lower their markup based on market pressures, or choose to lower their markup after the company's finances have been reviewed. (DOE's questions and consultant responses are provided in appendix 6B of the SNOPR TSD.)

In summary, DOE acknowledges that its approach to estimating distributor and contractor markup practices after amended standards take effect and change product costs is necessarily an approximation of real-world practices that are both complex and varying with business conditions. At this time, however, given the remarks from the consultant about the difficulty of maintaining fixed-percentage markups, and the lack of persuasive evidence that standards facilitate a sustainable increase in profitability for distributors and contractors (as would be implied by keeping a fixed markup when product price increases), DOE continues to maintain that its use of incremental markups is reasonable. DOE intends to further examine this issue and welcomes information that could support improvement in its methodology.

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[38] Modular blower units with electric heat kits are also referred to as electric furnaces.

PG&E commented that the incremental markups DOE used in the March 2015 NOPR were too high because once the furnace efficiency standard takes effect, manufacturer, wholesaler, and contractor costs for furnaces meeting the new requirements are likely to drop due to economies of scale for manufacturers (and thereby wholesalers), product familiarity for contractors, and change of high-efficiency furnaces from premium to commodity-priced products. (PG&E, No. 0153 at p. 4) ASAP expressed agreement with PG&E. (ASAP, No. 0154–1 at p. 3)

DOE acknowledges that the costs of manufacturing, distributing and installing condensing furnaces could decline in the future if all or more of the market moves to condensing furnaces. Indeed, decline in the manufacturer selling price is reflected in the price trend discussed in section IV.F.1. However, a decline in costs associated with manufacturing and distributing condensing furnaces does not suggest that DOE's incremental markups are too high for wholesalers and contractors. DOE's incremental markup approach in the March 2015 NOPR was based on the premise that less expensive products (*i.e.,* non-condensing furnaces) would be replaced by more expensive products (*i.e.,* condensing furnaces) under the proposed standards. Applying incremental markups on the incremental cost increase of higher-efficiency products should be addressed separately from potential declines in the costs of distributing and installing condensing furnaces due to the proliferation of higher-efficiency furnaces in the market. However, the increased product price of condensing furnaces DOE analyzed in both the March 2015 NOPR and today's SNOPR are distinguishable from potential declines in the cost of distributing and installing condensing furnaces.

At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For the March 2015 NOPR and September 2015 NODA, DOE characterized three distribution channels to describe how NWGF products pass from the manufacturer to residential and commercial consumers:[39] (1) replacement market; (2) new construction, and (3) national accounts.[40] The NWGFs and MHGFs replacement market distribution channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → Consumer

The NWGF new construction distribution channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → General contractor → Consumer

The MHGF new construction distribution channel is characterized as follows:

Manufacturer → Mobile Home Manufacturer → Mobile Home Dealer → Consumer

In the third distribution channel, the manufacturer sells the product to a wholesaler and then to the NWGF commercial consumer through a national account:

Manufacturer → Wholesaler → Consumer (National Account)

To estimate average baseline and incremental markups, DOE relied on several sources, including: (1) The HARDI 2013 Profit Report[41] (for wholesalers); (1) U.S. Census Bureau 2012 Economic Census data[42] on the residential and commercial building construction industry (for general contractors, mechanical contractors, and mobile home manufacturers). In addition, DOE used the 2005 Air Conditioning Contractors of America's (ACCA) Financial Analysis on the Heating, Ventilation, Air-Conditioning, and Refrigeration (HVACR) contracting industry[43] to disaggregate the mechanical contractor markups into replacement and new construction markets. DOE also used various sources for the derivation of the mobile home dealer markup (see chapter 6 of the SNOPR TSD).

In addition to the markups, DOE obtained state and local taxes from data provided by the Sales Tax Clearinghouse.[44] These data represent weighted average taxes that include county and city rates. DOE derived shipment-weighted average tax values for each region considered in the analysis.

Chapter 6 of the SNOPR TSD provides details on DOE's development of markups for NWGFs and MHGFs.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of NWGFs and MHGFs at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased furnace efficiency. The energy use analysis estimates the range of energy use of NWGFs and MHGFs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE estimated the annual energy consumption of NWGFs and MHGFs at specified energy efficiency levels across a range of climate zones, building characteristics, and heating applications. The annual energy consumption includes the natural gas, liquid petroleum gas (LPG), and electricity used by the furnace.

To determine the field energy use of residential furnaces used in homes, DOE established a sample of households using NWGFs and MHGFs from the Energy Information Administration's (EIA) 2009 Residential Energy Consumption Survey (RECS 2009).[45]DOE assumed that furnaces in residential buildings smaller than 10,000 sq. ft. are residential furnaces. The RECS data provide information on the vintage of the home, as well as heating energy use in each household. DOE used the household samples not only to determine furnace annual energy consumption, but also as the basis for conducting the LCC and PBP analysis. DOE projected household weights and household characteristics in 2022, the first year of compliance with any amended or new energy conservation standards for NWGFs and MHGFs. To characterize future new homes, DOE used a subset of homes in RECS 2009 that were built after 1990.

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[39] DOE estimates that three percent of NWGFs are installed in commercial buildings. See section IV.E.3 for further discussion.

[40] The national accounts channel is an exception to the usual distribution channel that is only applicable to those NWGFs installed in the small to mid-size commercial buildings where the on-site contractor staff purchase equipment directly from the wholesalers at lower prices due to the large volume of equipment purchased, and perform the installation themselves. DOE's analysis assumes that about 17.5 percent of the NWGFs installed in the commercial sector use national accounts.

[41] Heating, Air Conditioning & Refrigeration Distributors International (HARDI). *2013 HARDI Profit Report,* available at *http://hardinet.org/* (last accessed April 19, 2016).

[42] U.S. Census Bureau, *2012 Economic Census Data,* available at: *www.census.gov/econ/* (last accessed Dec. 3, 2015).

[43] Air Conditioning Contractors of America (ACCA), *Financial Analysis for the HVACR* Contracting Industry (2005), available at *www.acca.org/store/* (last accessed Apr. 19, 2016).

[44] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates (2016), available at *http://thestc.com/STrates.stm* (last accessed April 18, 2016).

[45] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey: 2009 RECS Survey Data (2013), available at: *http://www.eia.gov/consumption/residential/data/2009/* (last accessed July 29, 2014).

To determine the field energy use of NWGFs used in commercial buildings, DOE established a sample of buildings using NWGFs from EIA's 2003 Commercial Building Energy Consumption Survey (CBECS 2003),[46] which is the most recent such survey that is currently available.[47] DOE assumed that 80 percent of furnaces in commercial buildings smaller than 10,000 sq. ft. are residential NWGFs.[48] DOE assumed that each commercial building has one or more NWGFs.

1. Active Mode

To estimate the annual energy consumption in active mode of furnaces meeting the considered efficiency levels, DOE first calculated the house heating load using the RECS 2009 estimates of household furnace annual energy consumption,[49] the existing furnace's estimated capacity and efficiency (AFUE), and the heat generated from the electrical components. The analysis assumes that some homes have two furnaces, with the heating load split evenly between them. The estimation of furnace capacity is discussed further below. The AFUE of the existing furnaces was determined using the furnace vintage (the year of installation of the product) provided by RECS and historical data on the market share of furnaces by AFUE by region (see section IV.E). DOE then used the house heating load to calculate the burner operating hours at each considered efficiency level, which allowed calculation of the fuel consumption and electricity consumption based on the DOE residential furnace test procedure. DOE assumed in this analysis that furnaces will be installed using instructions in the manufacturer's installation manual in order to ensure proper operation. DOE is not aware of any data reporting on deficiencies that will undermine the rated performance.

a. Furnace Capacity

In the March 2015 NOPR, DOE assigned a input capacity for the existing furnace of each housing unit based on an algorithm that correlates the heating square footage provide by RECS 2009 and the outdoor design temperature for heating (*i.e.,* the temperature that is exceeded by the 30-year minimum average temperature one percent of the time), based on the estimated location of the RECS 2009 household, with the distribution of input capacities of furnaces based on a reduced set of models from the 2013 AHRI residential furnace certification directory.[50] DOE assumed that for the new furnace installation, the input capacity would remain the same as the input capacity for the existing furnace. *Id.* However, in the September 2015 NODA, DOE distributed the input capacity based on shipments data by input capacity bins for the year 2000 provided by AHRI.[51] 80 FR 55038, 55041 (Sept. 14, 2015). The AHRI data was further disaggregated into 5-kBtu/h bins using the reduced models dataset from the September 2015 NODA analysis.

In response to the September 2015 NODA, AGA and APGA stated that GTI's report found that RECS lacks the data needed to perform furnace capacity assignments, and additional market information is needed to appropriately perform this analysis. (AGA, No. 0175–2 at p. 2; AGA, No. 0175–2 at p. 3; AGA, No. 0175–3 at p. 8; APGA, No. 0180 at p. 6; APGA, No. 0180 (attachment) at p. 8)

DOE acknowledges that RECS does not directly report the input capacity of the furnace, but, as described above, it provides data that allows for a reasonable estimation of the capacity when combined with shipments data disaggregated by capacity. In addition, DOE reviewed average shipments data by capacity provided by AHRI over 1995–2014, as well as 2014 HARDI shipments data by capacity and AFUE bins for three regions.[52][53] These two data sources are not consistent and DOE needs further information to be able to utilize this data. For this SNOPR, DOE kept the approach used in the September 2015 NODA and used the AHRI 2000 shipments data. See chapter 7 and appendix 7B of the SNOPR TSD for more detail.

In addition, the GTI report submitted by AGA and APGA in response to the September 2015 NODA stated that correct furnace fan sizing would be important for DOE to ensure that a furnace/air conditioner system will provide adequate cooling, especially in warmer climates dominated by cooling demand. The GTI report stated that furnace capacity in these cases will not be based on the peak heating load, but rather on the furnace fan capacity linked to the air conditioner system capacity. The GTI report stated that, as a result, the furnace will often be oversized for heating. The GTI report stated that the best fit line for heating load vs. furnace size is consistent with the idea that furnaces are generally oversized for the heating load. (AGA, No. 0175–3 at p. 4; APGA, No. 0180 at p. 6; APGA, No. 0180 (attachment) at p. 4)

DOE acknowledges that it is common practice is to install a sufficiently large furnace to provide the furnace fan that is required to meet the cooling requirements. However, the furnace fan standards that will take effect in July 2019 require fan motor designs that can modulate the amount of air depending on both heating and cooling requirements. Thus, the size of the furnace fan (and the furnace capacity) will be able to better match the heating requirements of the house. DOE notes that this will primarily affect furnaces located in warmer areas of the country (with higher cooling loads), which potentially lead to higher amount of oversizing than is assumed in the analysis for these households. DOE performed a sensitivity analysis to assess the impact of furnace fan cooling requirements and the pending changes in furnace fan design as part of its furnace sizing methodology by using primarily 2014 HARDI regional shipments data by capacity. See chapter 7 of the SNOPR TSD for further detail.

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[46] U.S. Department of Energy: Energy Information Administration, Commercial Buildings Energy Consumption Survey (2003), available at *http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata)* (last accessed July 29, 2014).

[47] DOE recognizes that summary energy consumption estimates have been released for 2012 CBECS. For consideration of a final rule, DOE will rely on the most recent, complete version of CBECS.

[48] The remaining 20 percent are assumed to be weatherized gas furnaces.

[49] EIA estimated the equipment's annual energy consumption from the household's utility bills using conditional demand analysis.

[50] AHRI. *Directory of Certified Product Performance: Residential Furnaces.* Available at: *https://www.ahridirectory.org/ahridirectory/pages/rfr/defaultSearch.aspx (last visited May 30, 2016).*

[51] AHRI (formerly GAMA). Furnace and Boiler Shipments data provided to DOE for Furnace and Boiler ANOPR. (January 23, 2002).

[52] D+R International, 2014 Natural Gas Furnace Market Report (2014), available at *www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0118* (Last accessed May 5, 2016).

[53] The AFUE bins were: <80-percent AFUE, 80 to 85 percent AFUE, 85 to 90 percent AFUE, 90 to 92 percent AFUE, 92 to 94 percent AFUE, 96 to 98 percent AFUE, and 98 percent AFUE and above.

In response to the March 2015 NOPR, Allied Air stated that the furnace sizing analysis should be based on output capacity, not input capacity. (Allied Air, No. 0044 at p. 216) Although sizing based on output capacity more accurately matches the heating load, sizing the furnace by input capacity slightly increases electricity use, which is offset by slight decrease in fuel use and decrease in total installed cost differential. Therefore, for this SNOPR, DOE did not change the analysis approach.

Under a separate standard for small furnaces that does not require a condensing furnace, DOE expects that some consumers who would otherwise install a typically-oversized furnace[54] would choose to downsize in order to be able to purchase a non-condensing furnace. For the September 2015 NODA analysis, DOE identified a sample of households that would choose to downsize to a non-condensing furnace at each of the considered small furnace capacities. In identifying these households, DOE first determined whether a household would install a non-condensing furnace with an input capacity greater than the small furnace size limit in the no-new-standards case, based on the assigned input capacity and efficiency, determined as described above. In each standards case, DOE applied a smaller-than-typical oversizing factor (1.35 *vs* 1.7) to estimate the number of consumers who would downsize to the input capacity limit for small furnaces.

Several stakeholders commented on the downsizing methodology used in the September 2015 NODA. AHRI and Rheem stated that the percentage of households assumed to install a small furnace is generally too high for each input rate definition, and significantly overestimated at 60 and 65 kBtu/h. AHRI and Rheem stated that data over the last 20 years indicates that only 10 percent of consumers install furnaces with an input rate under 60 kBtu/h, while DOE assumed 15 percent install such units. AHRI noted what it believed to be similar inconsistencies at 70 kBtu/h and 80 kBtu/h. (AHRI, No. 0181 at pp. 2–3, 5; Rheem, No. 0184 at p. 3; Rheem, No. 0199 at p. 3) Lennox stated that DOE's downsizing assumptions shift significantly from established historical trends. (Lennox, No. 0201 at p. 5) Ingersoll Rand commented that it would be unusual for a newly installed furnace to have a significantly lower input than the one it has replaced, as would happen with DOE's downsizing methodology. (Ingersoll Rand, No. 0203 at p. 2) In contrast, the Efficiency Advocates stated that although oversizing has been standard practice in the past, under the small furnace scenario, significant up-front cost can be avoided by installing a smaller non-condensing furnace. The Efficiency Advocates stated that downsizing is particularly likely in warm climates where furnaces are commonly oversized to have a large blower for the cooling season. (Efficiency Advocates, No. 0196 at p. 2)

In response, the comments by AHRI, Rheem and Ingersoll Rand reflect market conditions in recent years, where oversizing of furnaces has been a common installation practice. DOE agrees with the Efficiency Advocates that in the case of a standard that allows small furnaces to use non-condensing technology, many consumers would have a financial incentive to downsize their furnace. In such a case, changes from the past practice could be expected.

Ingersoll Rand and the GTI report submitted by AGA and APGA stated that the "small fraction" used to determine the use of a small, non-condensing NWGF was not provided. Ingersoll Rand requested that the "small fraction" used in the analysis be provided along with the reasoning for selecting that level. (Ingersoll Rand, No. 00203 at p. 2; AGA, No. 0175–3 at p. 3; APGA, No. 0180 (attachment) at p. 3) The Efficiency Advocates recommended that DOE prepare several downsizing scenarios in addition to the September 2015 NODA assumption of 35 percent. (Efficiency Advocates, No. 0196 at p. 2)

DOE did not assume that a specific fraction of consumers would downsize. For the September 2015 NODA, for households assigned a non-condensing furnace in the no-new-standards case, DOE determined a downsized input capacity using a reduced oversize factor of 35 percent (instead of the typical 70 percent).[55] If the downsized input capacity was below a given small furnace threshold, DOE assumed that the household would downsize to that capacity. The fractions of consumers purchasing a small furnace under the considered definitions are shown in Table IV.12. Further details about the downsizing methodology, including a sensitivity analysis, are presented in appendix 8J of the SNOPR TSD.

TABLE IV.12—SHARE OF SAMPLE HOUSEHOLDS MEETING SMALL FURNACE DEFINITION

[Percent]

Small furnace definition	Without amended standards	With separate small furnace standard and downsizing
≤40 kBtu/h	1	6
≤45 kBtu/h	3	8
≤50 kBtu/h	8	14
≤55 kBtu/h	10	15
≤60 kBtu/h	19	31
≤65 kBtu/h	19	38
≤70 kBtu/h	30	43
≤75 kBtu/h	42	53
≤80 kBtu/h	56	65
≤85 kBtu/h	56	65
≤90 kBtu/h	65	71
≤95 kBtu/h	67	73
≤100 kBtu/h	79	84

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[54] By typical oversizing, DOE refers to a value of 1.7 as specified in the DOE residential furnace and boiler test procedure.

[55] ACCA recommends oversizing by maximum of 40 percent. ACCA. Manual S—Residential Equipment Selection (2nd Edition). Available at: *https://www.acca.org/*.

b. Adjustments to Energy Use Estimated for 2009

DOE adjusted the energy use estimated for 2009 to "normal" weather by using long-term heating degree-day (HDD) data for each geographical region.[56] For the SNOPR, DOE accounted for changes in the geographic distribution of homes based on *AEO2015* projections of HDD.[57]

DOE accounted for change in building shell characteristics and building size (square footage) between 2009 and the compliance year by applying the building shell indexes in the National Energy Modeling System (NEMS) associated with the Annual Energy Outlook. The indexes consider projected improvements in building thermal efficiency due to improvement in home insulation and other thermal efficiency practices, as well as projected increases in square footage. In the March 2015 NOPR, application of the index resulted in nine-percent lower building heating load from 2009 to 2021. 80 FR 13120, 13147 (March 12, 2015). EIA provides separate indexes for new buildings and existing buildings.

In developing the building shell index for new construction, building shell efficiency is determined by the relative costs and energy bill savings for several levels of heating and cooling equipment, in conjunction with the building shell attributes. In this SNOPR, DOE used building shell indexes based on *AEO2015,* which did not incorporate the 2015 IECC. However, the 2015 IECC has to be adopted by state or local jurisdictions before it takes effect. As of April 2016, more than half of the country was still under the 2009 IECC or older codes instead of the 2012 IECC or 2015 IECC.[58] Given that the extent of adoption of the 2015 IECC across the United States is uncertain, DOE believes that use of building shell indexes based on *AEO2015* is reasonable. For the final rule, DOE plans to use *AEO2016,* which will include updated building shell efficiency factors that reflect the most current building codes.

c. Furnace Electricity Use

In the March 2015 NOPR, DOE calculated furnace fan electricity consumption using field data on static pressures of duct systems, as well as airflow curves for furnace blowers from manufacturer literature. 80 FR 13120, 13150 (March 12, 2015). As noted in section IV.C, the furnace designs used in DOE's analysis incorporate furnace fans that meet the standards that will take effect in 2019.[59] Condensing furnaces tend to have a more restricted airflow path than non-condensing furnaces because of the presence of a secondary heat exchanger, so the furnace fan generally requires more energy to produce the equivalent airflow output for a condensing furnace compared to a similar non-condensing furnace.

In response to the March 2015 NOPR, Ingersoll Rand asked why DOE's analysis assumed condensing furnaces used 5 percent more electricity compared to non-condensing furnaces in, while the July 2014 furnace fan final rule used a difference of 7 or 8 percent. (Ingersoll Rand, No. 0044 at p. 205) In response, the March 2015 NOPR analysis applied on average a 10-percent power consumption increase for condensing furnaces based on the 2014 furnace fan efficiency standards final rule (5 percent was reported incorrectly in appendix 7B of the NOPR TSD).

DOE accounted for furnace fan use during heating mode and the difference in electricity use between the baseline efficiency level (80-percent AFUE) and the higher efficiency levels for furnace fan use during cooling mode, not the total furnace fan use during cooling mode. DOE accounted for a 10 percent increase in electricity use for the furnace fan in condensing furnaces during the cooling season due to the increase in static pressure from the secondary heat exchanger. To calculate electricity consumption for the inducer fan, ignition device, gas valve and controls, DOE used the calculation described in DOE's test procedure[60] as well as 2013 AHRI Directory of Certified Furnace Equipment and manufacturer product literature.[61] Electricity consumption of condensing furnaces reflects use of a condensate pumps and heat tape.

Goodman stated that given that auxiliary components such as condensate pumps and heat tape are unique to condensing furnaces, it is impossible for the annual electricity consumption of auxiliary components to be lower for condensing furnaces than for non-condensing furnaces. (Goodman, No. 0135 at p. 7) DOE agrees that a condensate pump and heat tape add to the electricity use of a condensing furnace, but because DOE assumed that the input capacity of a condensing furnace is the same as the non-condensing furnace it is replacing, the condensing furnace would operate less than would a non-condensing furnace due to its higher efficiency. Thus, the electricity use of auxiliary components may be lower than for a non-condensing furnace despite the additional electricity use of the condensate pump and heat tape.

As stated above, a condensing furnace uses more electricity than an equivalent non-condensing furnace. DOE accounted for the additional heat released by the furnace fan motor that needs to be compensated by the central air conditioner during the cooling season based on the 2014 furnace fan final rule. DOE also accounted for additional electricity use by the furnace fan during continuous fan operation throughout the year.

d. Rebound Effect

Higher-efficiency furnaces reduce the operating costs for a consumer, which can lead to greater use of the furnace. A direct rebound effect occurs when a product that is made more efficient is used more intensively, such that the expected energy savings from the efficiency improvement may not fully materialize. In the March 2015 NOPR analysis, DOE examined a 2009 review of empirical estimates of the rebound effect for various energy-using products.[62] 80 FR 13120, 13148. This review concluded that the econometric and quasi-experimental studies suggest a mean value for the direct rebound effect for household heating of around 20 percent. DOE also examined a 2012 ACEEE paper[63] and a 2013 paper by Thomas and Azevedo.[64] Both of these publications examined the same studies that were reviewed by Sorrell, as well as Greening *et al,*[65] and identified methodological problems with some of the studies. The studies, believed to be most reliable by Thomas and Azevedo, show a direct rebound effect for heating products in the 1-percent to 15-percent range, while Nadel concludes that a more likely range is 1 to 12 percent, with rebound effects sometimes higher than this range for low-income households who could not afford to adequately heat their homes prior to weatherization. Based on DOE's review of these recent assessments (see chapter 10 of the SNOPR TSD), DOE used a 15 percent rebound effect for NWGFs and MHGFs in the March 2015 NOPR and September 2015 NODA.

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[56] National Oceanic and Atmospheric Administration (NOAA), NNDC Climate Data Online (2009), available at *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp* (last accessed July 29, 2014).

[57] U.S. Department of Energy, Energy Information Administration, *Annual Energy Outlook 2015,* available at *www.eia.gov/forecasts/aeo/pdf/0383(2015).pdf* (last accessed July 29, 2015).

[58] DOE Building Energy Codes Program. *Status of State Energy Code Adoption.* (Available at: *https://www.energycodes.gov/status-state-energy-code-adoption*).

[59] See Table 1 at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/42.*

[60] Found in 10 CFR part 430, subpart B, appendix N.

[61] AHRI Directory of Certified Furnace Equipment, February 2013 (Available at: *www.ahridirectory.org/ahridirectory/pages/home.aspx*).

[62] Steven Sorrell, *et. al, Empirical Estimates of the Direct Rebound Effect: A Review,* 37 Energy Pol'y 1356–71 (2009).

[63] Steven Nadel, "The Rebound Effect: Large or Small?" ACEEE White Paper (August 2012) (Available at: *www.aceee.org/white-paper/rebound-effect-large-or-small*).

[64] Brinda Thomas &Ines Azevedo, Estimating Direct and Indirect Rebound Effects for U.S. Households with Input–Output Analysis, Part 1: Theoretical Framework, 86 *Ecological Econ.* 199–201 (2013), available at *www.sciencedirect.com/science/article/pii/S0921800912004764.*

[65] Lorna A. Greening, *et. al.,* Energy Efficiency and Consumption—The Rebound Effect—A Survey, 28 *Energy Policy* 389–401 (2002).

ASAP stated that the 15 percent rebound value would be too high. (ASAP, No. 0050 at p. 101) Although a lower value might be warranted, DOE prefers to be conservative and not risk understating the rebound effect; therefore, DOE continued to use a 15 percent rebound effect for this SNOPR when accounting for national energy savings.

2. Standby Mode and Off Mode

DOE calculated furnace standby mode electricity consumption for each technology option identified in the engineering analysis by multiplying the power consumption at each efficiency level by the number of standby mode hours. DOE assumed that furnaces are not usually equipped with an off mode, so only the standby electricity consumption was considered. To calculate the annual number of standby mode hours for each sample household, DOE subtracted the estimated total furnace fan operating hours from the total hours in a year (8,760). The total furnace fan operating hours are the sum of the furnace fan operating hours during heating, cooling and continuous fan modes.

Goodman stated that DOE should take into account that manufacturers will almost completely transition to brushless permanent magnet (BPM) motors in 2019 due to the furnace fan rule, which will increase the standby mode electricity consumption of the furnace. (Goodman, No. 0135 at p. 5) DOE accounted for the additional electricity use of BPM motors in standby mode. Chapter 7 of the SNOPR TSD describes the methodology in more detail.

3. Comments on Energy Use Results

In its comments on the March 2015 NOPR, AHRI stated that the analysis unrealistically estimates zero or negative fuel use for some households with 90-percent AFUE furnaces. (AHRI, No. 0159 at p. 56) The households with zero use are households that switch from an 80-percent AFUE NWGF to either an electric furnace or heat pump. DOE accounts for the fuel switching from a gas water heater to an electrical water as a differential in energy use. Therefore for cases with water heater fuel switching, a negative fuel can occur when: (1) The heating energy use in standards cases is less than the gas water heater energy use; (2) when the household also switches to either an electric furnace or heat pump.

ASAP stated that a 2015 evaluation of furnace incentive programs in Massachusetts[66] suggests that DOE underestimated per-unit energy savings for a 95-percent AFUE furnace compared to an 80-percent AFUE furnace in the North by 31 percent. ASAP stated that Massachusetts is generally representative of average climate conditions in the North. (ASAP, No. 0154–1 at pp. 3, 5) The report cited by ASAP presents the results of a limited case study. DOE agrees that some households may experience greater energy savings from installing a condensing NWGF than others, as is reflected in the distribution of energy savings results. However, the energy savings depend not only on climate conditions, but other factors as well, such as physical building characteristics and household energy consumption behaviors, which may be different in other parts of the North.

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy efficiency standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of NWGFs and MHGFs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units and, for NWGFs, commercial buildings. As stated previously, DOE developed household samples from the 2009 RECS and 2003 CBECS. For each sample household or building, DOE determined the energy consumption for the furnace and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of NWGFs and MHGFs.

Inputs to the LCC calculation include the installed cost to the consumer, operating expenses, the lifetime of the product, and a discount rate. Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, wholesaler and contractor markups, and sales taxes (where appropriate)—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. Inputs to the payback period calculation include the installed cost to the consumer and first year operating expenses. DOE created distributions of values for aspects of installation cost, repair and maintenance, product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially-available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample several input values from the probability distributions and NGWF and MHGF user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 consumers per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

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[66] The Cadmus Group, 2015. High Efficiency Heating Equipment Impact Evaluation. Available at *http://www.neep.org/sites/default/files/resources/High-Efficiency-Heating-Equipment-Impact-Evaluation-Final-Report.pdf.*

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(B)(ii)) For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required.

DOE calculated the LCC and PBP for all consumers of NWGFs and MHGFs as if the consumers were to purchase a new product in the expected year of required compliance with amended or new standards. Any amended or new standards would apply to NWGFs and MHGFs manufactured 5 years after the date on which any amended or new standard is published. (42 U.S.C. 6295(f)(4)(C)) At this time, DOE estimates publication of a final rule in early 2017. Therefore, for purposes of this SNOPR analysis, DOE used 2022 as the first year of compliance with any amended or new standards for NWGFs and MHGFs.

SoCalGas stated that considering that furnace replacement may not be done at move-in, but at a point later during homeownership, in most cases, a condensing furnace will rarely pay for itself from the homeowner's perspective. (SoCalGas, No. 0132–2 at p. 4; SoCalGas, No. 0132–6 at p. 8) AHRI stated that if the purchaser moves before the end of the furnace lifetime, then the consumer does not receive the projected benefits. AHRI stated that analyses by NAHB show that the typical homeowner stays in a home for approximately 13 years, well below the average lifetime assumed by DOE of 22 years. (AHRI, No. 0159 at pp. 15, 52–53)

DOE notes that it modeled the expected product lifetime, and not the expected period of homeownership. DOE recognizes that the lifetime of a gas furnace and the residence time of the purchaser may not always overlap. However, EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) In the context of this requirement, DOE believes that the expected product lifetime, not the expected period of homeownership is the appropriate modeling period for the LCC, as energy cost savings will continue to accrue to the new owner/occupant of a home after its sale. If some of the price premium for a more-efficient furnace is passed on in the price of the home, there would be a reasonable matching of costs and benefits between the original purchaser and the home buyer. To the extent this does not occur, the home buyer would gain at the expense of the original purchaser.

As discussed in section IV.F.9, in its LCC analysis DOE considered the possibility that some consumers may switch to alternative heating systems in the case of a standard that requires condensing technology. The LCC analysis showed that some consumers who switch end up with a reduction in the LCC relative to their projected purchase in the no-new-standards case.

AGA commented that that DOE's rationale considering avoiding a cost imposed by the proposed standard to be a benefit to the consumer does not make sense. (AGA, No. 0050 at p. 121) Ingersoll Rand stated that consumers who are forced to switch from gas to electric heating should be considered to be experiencing a net cost. (Ingersoll Rand, No. 0182 at p. 3) In response, DOE clarifies that no consumers would be forced to switch under any standards case. DOE estimated that some consumers would switch to electric heating if the economics are very favorable compared to installing a condensing furnace. In some cases, the alternative product has a lower LCC than the furnace purchased in the no-new-standards case, which means that the consumer benefits. Although this outcome might suggest that the consumer would switch in the no-new-standards case, reluctance to change and various transaction costs would tend to limit such behavior.

Referring to the situation with households who rent, AHRI expressed concern that analyzing the cost to the purchaser of the product who receives no benefit and the benefit to tenants who do not purchase the product distorts the meaning of the LCC analysis. (AHRI, No. 0050 at p. 27) Because landlords generally seek to recoup their expenses in the rent, DOE's LCC analysis implicitly assumes that the cost of a product incurred by a landlord is passed on to the tenant who pays the utility bills. DOE acknowledges that this assumption is a simplification of the actual division of costs and benefits. DOE welcomes information that would provide more insight on actual landlord practices associated with furnace replacement.

Table IV.13 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the SNOPR TSD and its appendices.

TABLE IV.13—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer, wholesaler, and contractor markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	Baseline installation cost determined with data from 2015 RS Means. Assumed no change with efficiency level.

TABLE IV.13—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the RECS 2009 and CBECS 2003.
Energy Prices	Natural Gas: Based on EIA's Natural Gas Navigator data for 2014. Propane: Based on EIA's SEDS for 2014. Electricity: Based on EIA's Form 861 data for 2014. Variability: Regional energy prices determined for 30 regions. Marginal prices used for both natural gas and propane.
Energy Price Trends	Based on *AEO2015* price forecasts.
Repair and Maintenance Costs	Based on 2015 RS Means data and other sources. Assumed variation in cost by efficiency.
Product Lifetime	Based on shipments data, multi-year RECS and American Housing Survey data. Mean lifetime of 21.5 years.
Discount Rates	Residential: Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. Commercial: Calculated as the weighted average cost of capital for businesses purchasing NWGFs. Primary data source was Damodaran Online.
Compliance Date	2022.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the SNOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis with the manufacturer, wholesaler, and contractor markups and sales taxes, as appropriate. DOE used baseline markups for baseline consumer products and it applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Based on the updated engineering analysis and markups, for the SNOPR, the product price was estimated to be $208 to $522 more for a condensing NWGF than a non-condensing one.

For the default price trend for residential furnaces, DOE derived an experience rate based on an analysis of long-term historical data. In the March 2015 NOPR, as a proxy for manufacturer price, DOE used Producer Price Index (PPI) data for warm-air furnace equipment from the Bureau of Labor Statistics from 1990 through 2013.[67] In this SNOPR, DOE used PPI data from the BLS from 1990 through 2015.[68] An inflation-adjusted PPI was calculated using the implicit price deflators for GDP for the same years. To calculate an experience rate, DOE performed a least-squares power-law fit on the inflation-adjusted PPI versus cumulative shipments of residential furnaces, based on a corresponding series for total shipments of residential furnaces (see section IV.G of this notice for discussion of shipments data). DOE then derived a price factor index, with the price in 2015 equal to 1, to forecast prices in 2022 for the LCC and PBP analysis, and, for the NIA, for each subsequent year through 2051. The index value in each year is a function of the experience rate and the cumulative production through that year. To derive the latter, DOE combined the historical shipments data with projected shipments from the no-new-case projection made for the NIA (see section IV.H of this notice). Application of the index results in prices that decline 5 percent from 2015 to 2022.

DOE emphasizes that its learning curve methodology was developed by examining the literature on both economic theory and empirical studies of energy technology learning rates. DOE believes that its current learning curve methodology is consistent with economic theory, and utilizes the most extensive time series data available specific to this product.

In response to the March 2015 NOPR, some stakeholders suggested that non-condensing and condensing furnaces may have different learning curves. SoCalGas stated that non-condensing furnaces are mature so their learning rate should be near zero; the rate should be different for condensing furnaces. (SoCalGas, No. 0132–2 at p. 6) ASAP stated that it would be expected for the prices of technologies used in high-efficiency products to decline much faster than the total price of the product. ASAP stated that the use of historic price trends of heating products to estimate learning rates for furnaces implicitly assumes that the prices of non-condensing and condensing furnaces will change at the same rate, and will likely significantly underestimate future declines in the cost of condensing furnaces. ASAP recommended that DOE use the high decreasing price trend scenario for its main analysis because the trend captures the market during the period when condensing products grew to significant market share, and is more representative of the expected trends under a condensing standard. (ASAP, No. 0154–1 at pp. 3–5) Fletcher, CEC, and the Joint Consumer Commenters stated that the product price of condensing furnaces will decrease with an increase in production and innovation due to the proposed standards. (Fletcher, No. 0064 at p. 1; CEC, No. 0120 at p. 5; Joint Consumer Commenters, No. 0123 at pp. 18–21) In contrast, AHRI stated that as condensing furnaces have been produced since at least 1984, most of the learning for these products has already been captured in current designs. AHRI stated that it is not likely that there are major future reductions in production cost from learning. (AHRI, No. 0159 at p. 49)

DOE acknowledges that the prices of non-condensing and condensing furnaces may not change at the same rate, and using a trend for all NWGFs to represent the price trend of condensing furnaces may underestimate the future decline in the cost of condensing furnaces. It also acknowledges that an increase in production and innovation due to a condensing standard could result in decline in the cost of condensing furnaces. However, DOE could not find data that would allow a projection of how the price trend for condensing furnaces may differ from the trend for all NWGFs. Thus, for the SNOPR, it used the same price trend projection for condensing and non-condensing furnaces. Although information about price trends related to different furnace technologies is not available, DOE is exploring ways to estimate learning rates for different technologies.[69] DOE welcomes comments on ways to derive learning rates for different types of technologies. This is identified as issue 14 in section VII.E, "Issues on Which DOE Seeks Comment."

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[67] U.S. Department of Labor, Bureau of Labor Statistics, Produce Price Indices Series ID PCU333415333415C, available at *www.bls.gov/ppi/* (last accessed April 18, 2016).

[68] *Id.*

A detailed discussion of DOE's derivation of the experience rate is provided in appendix 8C of the SNOPR TSD.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. As part of its analysis, DOE used information in the 2009 RECS to estimate the location of the furnace in each of the sample homes. For the March 2015 NOPR and September 2015 NODA, the installation cost estimates, including labor costs, were based on 2013 *RS Means* data.[70]

In its comments on the March 2015 NOPR, Ingersoll Rand stated that a small survey of dealers around the country showed that homeowners are actually charged an average rate of $100/hour for labor, compared to DOE's estimates of $52/hour to $71/hour from RS Means. (Ingersoll Rand, No. 0156 at p. 8)

In this SNOPR, DOE updated its data to 2015 RS Means.[71] In addition, DOE contacted RS Means to verify what labor costs and associated markups are more appropriate for installation of NWGFs and MHGFs in residential market. Based on RS Means input, DOE has revised its labor costs from residential labor costs to repair/remodeling labor costs, which are about 40 percent higher than previously applied in the NOPR. In addition, based on interactions with RS Means and from the Ingersoll Rand input, DOE modified its labor costs to better reflect actual installation costs applied in the field. See chapter 8 of the SNOPR TSD for additional details about the determination of installation costs.

DOE conducted a detailed analysis of installation costs for all potential installation cases. When a non-condensing is replaced with a non-condensing gas furnaces, the additional costs could include updating flue vent connectors, vent resizing, and chimney relining. When a non-condensing gas furnace is replaced with a condensing gas furnace, particular attention paid to venting issues in replacement applications, including adding a new flue venting (PVC), combustion air venting (PVC), concealing vent pipes, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), as well as condensate removal. DOE also included installation adders for new construction installations. For non-condensing furnaces, the only adder is a new flue vent (metal, including a fraction with stainless steel venting). For condensing gas furnaces, the adders include a new flue vent, combustion air venting for direct vent installations, accounting for a commonly vented water heater, and condensate removal. DOE gave separate consideration to the cost of installing a non-condensing gas furnace and condensing gas furnace in new homes and in mobile homes.

a. Basic Installation Cost

DOE's analysis in the March 2015 NOPR and September 2015 NODA, as well as this SNOPR, estimated basic installation costs that are applicable to both replacement and new home applications. These costs, which apply to both condensing and non-condensing gas furnaces, include furnace setup and transportation, gas piping, ductwork, electrical hookup, permit and removal/disposal fees, and where applicable, additional labor hours for an attic installation.

SoCalGas stated that DOE's analysis in the March 2015 NOPR did not consider the cost of asbestos removal in retrofitted homes. SoCalGas stated that asbestos abatement services in Southern California typically cost from $250 to $3,000 depending on site conditions. (SoCalGas, No. 0132–2 at p. 4) DOE agrees that asbestos presents a safety hazard that should be removed for all retrofit installations where it is present. However, DOE understands that the cost would be the same regardless of the furnace efficiency level, so it is not necessary to include this cost for the analysis of NWGF standards.

b. Additional Installation Costs for Non-Weatherized Gas Furnaces

For replacement applications, DOE included a number of additional costs ("adders") for a fraction of the sample households. For non-condensing gas furnaces, these additional costs included updating flue vent connectors, vent resizing, and chimney relining. For condensing gas furnaces, DOE included new adders for flue venting (PVC), combustion air venting (PVC), concealing vent pipes, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), and condensate removal. DOE also updated its analysis in this SNOPR in response to some comments it received as a result of the March 2015 NOPR and the September 2015 NODA, which are outlined below.

AHRI commented that because most furnace installations in existing buildings are emergency replacements during the heating season, there is a high premium on the ability to install a furnace quickly to prevent a house from freezing, so there is rarely time for a major reconstruction to accommodate a condensing furnace. (AHRI, No. 0159 at p. 59) While DOE understands that most homeowners can make accommodations to allow for proper installation of a condensing furnace in unusual cases where major reconstruction might be required, DOE agrees that some emergency situations will generate a higher installation cost. However, DOE understands that emergency situations may arise for both non-condensing and condensing installations, so it did not include the related costs in its analysis.

AGL Resources commented that DOE did not include certain materials and installation charges, like costs associated with ductwork modification and material cost for electrical work, in the non-condensing to condensing NWGF installation scenario. (AGL Resources, No. 0039 at p. 3; AGL Resources, No. 0112 at p. 3) In the March 2015 NOPR and the September 2015 NODA, DOE included the cost of electrical work required to add a condensate pump or heat tape outlet near the NWGF location, but did not include additional ductwork costs. These ductwork costs would impact all efficiency levels equally and DOE therefore did not add them for this analysis. DOE tentatively determined that this approach adequately reflects the electrical work and ductwork cost differential between the efficiency levels, so it did not make any additional changes for this SNOPR.

Venting Requirements of Condensing Non-Weatherized Gas Furnaces

In response to DOE's approach in the March 2015 NOPR and the September 2015 NODA, many stakeholders commented specifically on the venting requirements of condensing NWGFs compared to those of non-condensing NWGFs, which are outlined below.

Ingersoll Rand commented that DOE should use the NFGC venting guide, which has been thoroughly developed and is widely used, to determine vent sizing. (Ingersoll Rand, No. 0044 at p. 159) In response, DOE used the NFGC guidelines in the March 2015 NOPR and this SNOPR to determine vent resizing and chimney relining requirements as described further in appendix 8D.

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[69] Taylor, M. and K. S. Fujita, Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique, Lawrence Berkeley National Laboratory, Report No. LBNL–6195E (2013) (Available at: *http://efficiency.lbl.gov/sites/all/files/accounting_for_technological_change_in_regulatory_impact_analyses_the_learning_curve_technique_lbnl-6195e.pdf*).

[70] RS Means Company Inc., *RS Means Residential Cost Data*. Kingston, MA (2013).

[71] RS Means Company Inc., *RS Means Residential Repair & Remodeling Cost Data*. Kingston, MA (2015).

SoCalGas stated that DOE appears to assume in its analysis that condensing furnaces can be vented horizontally. SoCalGas stated that in its experience in California, flues are typically built vertically, regardless of the type of furnace or installed location. (SoCalGas, No. 0132–2 at p. 7; SoCalGas, No. 0132–6 at pp. 10–11) In the March 2015 NOPR and this SNOPR, DOE determined whether a condensing furnace is horizontally or vertically vented based on the shortest vent length. DOE's analysis assumes that 70 percent of condensing furnaces will be installed with a horizontal vent.

Metal-Fab commented that DOE did not consider the additional cost to properly vent condensing NWGFs, which can cost several hundred to a few thousand dollars in an existing home. (Metal-Fab, No. 0192 at p. 1) In the March 2015 NOPR and this SNOPR, DOE included the venting installation costs to replace a non-condensing NWGF with a condensing NWGF, including possible chimney relining, vent resizing, and orphaned water heater costs. In this SNOPR, DOE updated the vent costs using the latest RS Means 2015 data to predict for a retrofit installation range from $66 to $6,075 (with an average of $584).

NPGA commented that relevant gas codes, in particular the NFGC and International Fuel Gas Code, prohibit condensing furnaces from being directly vented into chimneys because the condensate can freeze and expand, damaging the chimney or chimney liner. (NPGA, No. 0130 at p. 2) PGW stated that venting through a chimney would require major modification of the flue in the chimney, particularly when the water heater currently shares a flue with the furnace. (PGW, No. 0122 at pp. 1–2) In response, DOE maintains its assumption in the March 2015 NOPR and the September 2015 NODA that condensing furnaces are not vented through an existing chimney but rather would require a new plastic vent. This plastic vent is assumed to go through the vent chimney only if it meets all applicable code requirements and is not being vented together with another appliance (such as a non-condensing water heater).

NiSource and Vectren commented that replacing a non-condensing furnace with a condensing one will require a new venting system or substantial modifications to the existing system may be necessary. NiSource and PGW stated that meeting the venting specifications of condensing furnaces may require structural changes to the building to accommodate a new venting system and relocation of the furnace to meet the code and installation requirements of the new condensing furnace system. (NiSource, No. 0127 at p. 3; Vectren, No. 0111 at p. 7; PGW, No. 0122 at pp. 1–2) PGW stated that common walls, which are characteristic of row housing, make side venting of a condensing furnace difficult and expensive. (PGW, No. 0122 at pp. 1–2) AGL Resources stated that longer-than-average vent runs, gas line extensions, ductwork modifications, and "snorkel" vent terminations to accommodate minimum clearances from these design factors will increase the average price of a condensing furnace installation. (AGL Resources, No. 0112 at pp. 3–4) Nortek, AHRI, AGL Resources, Carrier, and NMHC, NAA, and NLHA stated that manufacturers' requirements, local ordinances, and industry codes determine the minimum clearances to sidewalks, average snow accumulation level, overhangs, and air intake sources, including operable doors and windows, building corners, and gas meter vents. (Nortek, No. 0137 at p. 2; AHRI, No. 0159 at pp. 59, 61; AGL Resources, No. 0039 at p. 3; AGL Resources, No. 0112 at pp. 3–4; Carrier, No. 0116 at p. 16; NMHC, NAA, and NLHA, No. 0117 at p. 3) Nortek and AHRI stated that in most cases, access to an outside wall with sufficient clearance from operable windows and doors will be a practical necessity to vent a condensing furnace. (Nortek, No. 0137 at p. 2; AHRI, No. 0159 at pp. 59, 61–62)

In the March 2015 NOPR and the September 2015 NODA, DOE assumed that condensing furnaces do not utilize the existing venting system but instead require new dedicated plastic venting that meets all applicable building codes and manufacturer instructions. DOE understood that vent length varies depending on where a suitable wall is located relative to the furnace. In addition, when applicable, a snorkel termination is accounted for to meet minimum clearances to sidewalks, average snow accumulation level, overhangs, and air intake sources, including operable doors and windows, building corners, and gas meter vents. DOE assumed that the replacement furnace would remain in the same location as the existing furnace and accounted for the new vent length and structural changes such as wall knockouts, to install new venting. In some installations, it could be easier and cheaper to change the furnace location, but this would require gas line extensions and ductwork modifications. DOE accounted for additional vent length for housing units with shared walls. DOE also accounted for the cost of vent resizing in the case of an orphaned water heater.

Nortek and AHRI stated that to properly vent a condensing furnace, there needs to be the ability to run a vent pipe to the outside within the pressure drop limitations of the combustion fan. (Nortek, No. 0137 at p. 2; AHRI, No. 0159 at pp. 59, 61) The vent pipe length limitations depend on a number of factors including number of elbows, vent diameter, horizontal vs. vertical length, as well as combustion fan size. A review of several manufacturer installation manuals shows that the maximum vent lengths range from 30 to 130 feet depending primarily on the vent diameter. DOE used this information for the March 2015 NOPR and this SNOPR. See Chapter 8 in the SNOPR TSD for more details.

Some condensing NWGF installations require an additional cost to conceal the PVC vent pipes that pass through the living space. NMHC, NAA, and NLHA stated that building construction will determine whether the vent pipe can be recessed or must be included in a soffit. (NMHC, NAA, and NLHA, No. 0117 at p. 3) For the March 2015 NOPR and this SNOPR, DOE assumed that a fraction of condensing furnace installations in replacement and new owner applications will require concealing vent pipes. Appendix 8D in the SNOPR TSD describes the methodology used to determine the households that would require concealing vents and the associated costs.

NAHB stated that the additional installation cost for concealing vent pipes in replacement applications reported in the NOPR appears to be very low. NAHB stated that this presumably includes drywall work as well as painting, which would require at least one separate visit from a contractor for each step. NAHB stated that the RS Means labor and materials costs would not account for the multiple set-up, breakdown, and trip charges. (NAHB, No. 0124 at p. 2) For the March 2015 NOPR, DOE accounted for the work required to penetrate walls and conceal vent pipes when required for installation of a new condensing furnace. DOE has tentatively determined that the range of costs applied in this SNOPR analysis sufficiently accounts for the costs required to conceal vent pipes.

Common Venting

Common venting provides a single exhaust flue for multiple gas appliances. In some cases, a non-condensing NWGF is commonly vented with a gas-fired water heater. When the non-condensing NWGF is replaced with a condensing NWGF, the new condensing furnace and the existing water heater can no longer be commonly vented due to different venting requirements,[72] and the water heater becomes "orphaned." The existing vent may need to be modified to safely vent the orphaned water heater. DOE accounted for a fraction of installations that would require chimney relining or vent resizing for the orphaned water heater, including updating flue vent connectors, resizing vents, or relining chimneys when applicable based upon the age of the furnace and the home.

Commenting on the March 2015 NOPR, MHI stated that 92 percent AFUE furnaces require a dedicated venting system to meet positive vent pressures, which is particularly problematic for the replacement market because it alters the performance characteristics of existing common venting. MHI stated that the proposed standard would require consumers to take additional steps to comply with proper venting requirements in existing homes, which in many cases would be impractical, if not impossible. (MHI, No. 0129 at p. 1) NPGA expressed concern that a 92 percent AFUE standard could cause various venting issues during furnace replacement, which could add cost to reconfigure the venting system and raise potential safety concerns in venting an orphaned water heater if the water heater vent is not properly sized. (NPGA, No. 0044 at pp. 18–19). NMHC, NAA, and NLHA stated that replacing both the commonly-vented gas furnace and gas water heater while maintaining the vertical vent is so costly as to be impractical in most situations. (NMHC, NAA, and NLHA, No. 0117 at p. 4) MUD stated that orphaned water heaters would not properly vent or satisfy the installation requirements of NFPA 54 if Category I furnaces are removed from the common stacks. (MUD, No. 0144 at p. 2) CenterPoint Energy, Vectren, and Carrier stated that replacing a non-condensing furnace with a condensing one may require significant and expensive modifications to the existing vent system, such as installing a chimney liner to maintain safe venting of the orphaned natural gas water heater, or replacement of the existing water heater with a new power-vented water heater. (CenterPoint Energy, No. 0083 at p. 2; Vectren, No. 0111 at p. 7; Carrier, No. 0116 at p. 19) AHRI stated that in many new homes, it would be possible to install a condensing gas furnace and a power-vented gas water heater and avoid the cost of installing a chimney. (AHRI, No. 0159 at p. 59)

DOE has tentatively determined that the assumptions it made and costs it included for the March 2015 NOPR and September 2015 NODA adequately address the concerns raised in the above comments. DOE's analysis reflects the likelihood that in some cases, replacing a non-condensing furnace with a condensing one may require significant modifications to the existing vent system for the commonly-vented gas water heater. It accounted for costs for updating the vent connector, relining the chimney, and resizing the vent, which would satisfy the installation requirements of NFPA 54. In the March 2015 NOPR and September 2015 NODA, DOE acknowledged that a potential option is to install either a storage or tankless power-vented water heater to avoid the cost of a chimney or metal flue vent just for the gas water heater or avoid switching to an electric storage water heater. For the SNOPR (similar to the March 2015 NOPR and September 2015 NODA), DOE did not consider the power-vented water heater option but instead added additional installation costs associated with venting of the Category I water heater, so that the orphaned water heater could be vented through the chimney or considered an electric storage water heater as an alternative.

PG&E stated that to accommodate higher-efficiency water heaters, newly constructed homes and many existing homes will need to upgrade their water heater vents, thereby greatly reducing the number of commonly-vented NWGFs and gas water heaters. PG&E expects that the frequency of vent resizing will decrease due to the increase in use of high-efficiency water heaters expected to occur before 2021. (PG&E, No. 0153 at pp. 4–5) ASAP agreed with PG&E that DOE's estimate of commonly-vented appliances is outdated and does not account for water heater market trends. (ASAP, No. 0154–1 at p. 2) PG&E also stated that DOE should eliminate added costs for new owner installations that are assumed to be common-vented with non-condensing water heaters, as homes in this category did not previously have a furnace and, therefore, do not have an existing common vent. (PG&E, No. 0153 at pp. 5–6)

DOE acknowledges that the frequency of chimney relining and vent resizing may decrease somewhat due to increase in use of high-efficiency water heaters. However, DOE did not find any information to predict the market share of high-efficiency water heaters in 2022 or the decrease in the fraction of installations with common vents. For new owner and new construction installations, DOE applied a venting cost differential if the owner/builder was planning to install a commonly-vented non-condensing furnace and water heater. For the SNOPR, DOE prefers to be conservative and not understate the impact of common venting, and consequently, DOE did not change the approach in this SNOPR that it used for the March 2015 NOPR and September 2015 NODA.

NMHC, NAA, and NLHA stated that in many multi-family properties, furnaces and gas water heaters from several units may share a chimney vent, or a furnace and a water heater within one apartment may be commonly vented. NMHC, NAA, and NLHA stated that eliminating a non-condensing furnace from a venting stack may initiate a cascade of equipment replacements due to venting requirements. (NMHC, NAA, and NLHA, No. 0117 at pp. 3–4) Carrier stated that each time a Category I furnace is replaced with a Category IV furnace in a multi-family building, the Category I common-vent system will require resizing. Carrier stated that labor costs for reconfiguration of existing Category I vents for installation of new Category IV vents could be higher than average due to space constraints. (Carrier, No. 0116 at p. 19)

DOE acknowledges that multi-family buildings may require additional measures to replace non-condensing furnaces with condensing furnaces. However, DOE did not find data that would allow a reliable estimation of the associated costs. DOE welcomes data on the costs associated with modifying the existing vent systems for non-condensing gas furnaces in multi-family buildings. This is identified as issue 11 in section VII.E, "Issues on Which DOE Seeks Comment."

CEC expects that retrofit installation costs will decrease as the industry provides innovative solutions to address the orphaned water heater issue for some retrofits. (CEC, No. 0120 at p. 5) Although DOE agrees that installation costs may decrease over time, DOE does not have enough data at this time to project such cost trends in its analysis. See discussion under New Venting Technologies.

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[72] The NFGC venting requirements refer to Category I, II, III, and IV gas appliances. Category I gas appliances, such as natural draft gas water heaters, exhaust high-temperature flue gases and are vented using negative static pressure vents designed to avoid excessive condensate production in the vent. Category IV gas appliances, such as condensing furnaces, exhaust low temperature flue gases and are vented using positive static pressure corrosion-resistant vents. Due to the different venting requirements, the NFGC does not allow common venting of condensing and non-condensing appliances.

Difficult Installations

The March 2015 NOPR analysis accounted for additional vent length to reach a suitable location on an outside wall where the vent termination could be located, as well as for wall penetrations and concealing flue vents in conditioned spaces.

In response to the March 2015 NOPR, several stakeholders commented that there are situations where venting a condensing furnace through an outside wall is impractical or impossible and would require moving walls, ceilings or other construction, especially in multi-family buildings, older homes, homes with shared walls, and homes with completely finished basements. (Nortek, No. 0137 at pp. 2–34; MUD, No. 0144 at p. 1; Questar Gas, No. 0151 at p. 1; AHRI, No. 0159 at p. 59; PGW, No. 0003–1 at pp. 1–3; PHCC, No. 0136 at p. 121; ACCA, No. 0158–2 at p. 121; Southside Heating and Air Conditioning, No. 0044 at pp. 306–307; NMHC, NAA, and NLHA, No. 0117 at pp. 2–3; Nayes, No. 0055 at p. 1; Meeks, No. 0140 at p. 1) AHRI and Nortek stated that in approximately 15–20 percent of buildings that currently have NWGFs, installing a condensing NWGF is impractical or impossible due to physical constraints of the existing buildings. (AHRI, No. 0159 at pp. 58–59; Nortek, No. 0137 at pp. 2–34)

In contrast, ACEEE stated that the number of installations that would entail high costs to retrofit condensing furnaces are small in number. The commenter stated that in Canada, national standards require condensing furnaces, and neither Natural Resources Canada nor its mortgage agency has found any significant implementation problems with that standard. ACEEE also checked with the U.S. furnace OEM who might have the largest market share in Canada, and that company reported essentially no pushback. ACEEE also contacted a major weatherization program about the costs to retrofit condensing furnaces in Philadelphia row houses. ACEEE stated that according to that source, the program has installed many condensing furnaces in Philadelphia row houses, and while they have found some challenges, they have also developed moderate-cost solutions to these problems. (ACEEE, No. 0113 at p. 7) The Efficiency Advocates stated that if small furnaces are allowed to remain non-condensing, the already small number of difficult-to-retrofit homes will decrease. (Efficiency Advocates, No. 0196 at p. 3)

Because the stock of buildings using NWGFs in Canada has many similarities to the stock using NWGFs in northern parts of the U.S., DOE investigated ACEEE's reference to the lack of issues related to the implementation of the Canadian standards. Before the 2012 Canadian condensing furnace standard, the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI) and other stakeholders raised similar concerns to those presented in the current rulemaking. HRAI afterwards put together a Q&A for installers highlighting the issues and possible solutions related to the standard.[73] Based on consultant research, the number of consumers and other stakeholders that have contacted NRCan about issues related to the condensing furnace standard has been extremely small.[74] The consultant information suggested that the potential problems that were identified with the requirement to retrofit condensing furnaces were either overstated, or that the installing contractors found ways to resolve the issues. In regards to row house installations, DOE believes that its current analysis includes costs comparable to the methods that were identified in the Philadelphia weatherization program to address venting difficulties in condensing NWGF installations. In addition, as suggested by the Efficiency Advocates, DOE's proposed separate standards for small and large NWGFs would significantly reduce the number of installations described as difficult.

NMHC, NAA, and NLHA stated that the location of the furnace determines how extensive the new horizontal venting must be to reach an exterior wall. NMHC, NAA, and NLHA stated that building code requirements present additional challenges for multi-family properties that have few open areas on the exterior of the building to accommodate furnace vents. (NMHC, NAA, and NLHA, No. 0117 at p. 3) Carrier stated that 92-percent AFUE Category IV furnaces require dedicated vent systems and terminations for multi-family installations. Carrier stated that for these installations, as the number of terminations increases, it becomes increasingly difficult or impossible to safely and reliably locate vent terminations on the outside of the structure. (Carrier, No. 0116 at p. 16) Carrier stated that if 80-percent AFUE Category I furnaces in a multi-unit common vent system must be replaced with condensing Category IV furnaces, each new furnace will require its own plastic venting system next to the metal vent for the remaining Category I furnaces. Carrier stated that the dedicated piping for each condensing furnace may lead to an impossible situation as more common-vented non-condensing furnaces are replaced with individually-vented condensing furnaces and room for venting is exhausted. PHCC stated that mechanical codes prohibit mixing return air from sleeping quarters from different units in a multi-family building, so a common non-condensing furnace used for multiple apartments would have to be replaced with separate condensing furnaces and separate venting systems. (PHCC, No. 0044 at p. 197) Southside Heating and Air Conditioning agreed with PHCC. (Southside Heating and Air Conditioning, No. 0044 at p. 201)

MUD commented that a majority of apartment buildings in its service territory utilize interior common vent stacks. MUD and Carrier stated that space constraints would prohibit the installation of new PVC venting in the existing chases. Carrier and MUD commented that sidewall venting may not be an option due to firewalls, sidewalks adjacent to building, or other local codes. Carrier stated that the situation may be exacerbated if it is desired to provide two-pipe or direct venting for the condensing furnace to provide cleaner outdoor combustion air for better reliability. MUD stated that building owners will face not only the high costs to replace furnaces, but will also need to modify vent stacks to comply with current codes. (MUD, No. 0144 at p. 2; Carrier, No. 0116 at pp. 13–14)

DOE recognizes the unique requirements for installing condensing furnaces in multi-family buildings. The analysis for the March 2015 NOPR and this SNOPR accounts for the cost of measures to address the constraints mentioned by the comments. Such measures include the vent length, existing common vents, and horizontal venting. Moreover, because many multi-family NWGF installations would utilize a relatively small furnace, DOE's proposed standard for NWGFs with a certified input capacity of 55 kBtu/h would greatly reduce the number of multi-family installations where a condensing furnace would be necessary. DOE's analysis estimates that more than 60 percent of replacement multi-family NWGF installations would not be impacted by the proposed standard.

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[73] Heating, Refrigeration and Air Conditioning Institute of Canada, *Q&A for Installers: Venting Solutions for Upcoming Changes to Furnace Standard* (Available at: *www.hrai.ca/PDFs/factsheets/PlasticVentingSystemAlternatives.pdf*).

[74] Edwards, P., *Impact of Condensing Standard on Consumers* (2016).

Condensate Withdrawal

DOE accounted for the cost of condensate removal for condensing NWGF installations, including, when applicable, a condensate drain, condensate pump, freeze protection (heat tape), drain pan, condensate neutralizer, and additional electric outlet for the condensate pump.

Carrier stated that code requirements may prevent condensate drainage to wastewater management utilities. (Carrier, No. 0116 at p. 34) AGL Resources stated that the fraction of furnaces requiring condensate neutralizers estimated by DOE is extremely low and does not take into account codes that require condensate neutralization and the high likelihood of encountering cast iron drain lines in older homes that require condensing furnace retrofits. AGL Resources also commented that the International Plumbing Code, the most widely adopted plumbing code in the U.S., requires neutralizers. (AGL Resources, No. 0112 at p. 4) Rheem stated that safe operation of the furnace prohibits a common condensate drain with an air conditioner condensate drain. (Rheem, No. 0142 at p. 8)

In response, DOE notes that although neutralization is included in the International Plumbing Code, it is not mandatory in most U.S. municipalities. To address situations where condensate must be treated before disposal, DOE assumed that a fraction of installations require condensate neutralizer for condensate withdrawal. As discussed in appendix 8D of the SNOPR TSD, DOE determined that the fraction of installations that require condensate neutralizer used in the NOPR analysis (12.5 percent) is representative of the current use. DOE notes that while Rheem does not allow a common condensate drain with an air conditioner condensate drain, other manufacturers allow a common drain.[75] [76] [77]

Questar Gas argued that with multi-family units, the condensate disposal requirements would be cost prohibitive and, in some cases, impossible. (Questar Gas, No. 0151 at p. 1) Rheem stated that multi-family homes pose the most serious challenges to providing proper condensate management without extensive structural modification to the home. (Rheem, No. 0142 at pp. 8–9) DOE acknowledges that condensate management can be costly for some multi-family units and very difficult in rare cases. DOE notes the proposed standard in this SNOPR would reduce the number of cases where condensate disposal costs would be extremely high.

Darling stated that mobile homes have no provision for disposing of condensate produced by a condensing furnace, leading to either costly plumbing additions to legally accommodate the condensate or the condensate drain dumping onto the ground under the home. (Darling, No. 0065 at p. 1) DOE understands that most mobile homes have air conditioning that has provisions for withdrawing condensate. In the March 2015 NOPR and this SNOPR, DOE included condensate piping for all MHGFs and condensate pump, heat tape, and electrical outlet for condensate pump and heat tape for a fraction of MHGF installations without air conditioning.

Goodman commented that condensate freeze protection is an added installation concern that must be addressed when installing condensing furnaces. (Goodman, No. 0135 at p. 3) Carrier and many contractors who responded to PHCC's and ACCA's survey stated that in some regions, condensate located in an unheated space (*e.g.,* attics, ventilated crawlspaces) could freeze in the condensate line. (Carrier, No. 0116 at p. 34; PHCC, No. 0136 at p. 11; ACCA, No. 0158–2 at p. 11) Darling and AGL Resources stated that replacing a non-condensing furnace located in an attic or crawlspace, which are typically unconditioned, with a condensing furnace may require heat tape to prevent freezing. (Darling, No. 0065 at p. 1; AGL Resources, No. 0112 at p. 4) AHRI stated that a significant number of contractors believe that heat tape is not sufficiently reliable to prevent condensate from freezing. (AHRI, No. 0159 at p. 62) In response, DOE notes that the use of heat tape to prevent condensate pipes from freezing is standard installation practice. DOE assumed that condensing furnaces installed in non-conditioned spaces would require heat tape to prevent condensate from freezing. DOE also accounted for the additional installation cost and energy use of the heat tape. In addition, DOE believes that as condensing furnaces become more common, contractors will become better trained and more aware of potential issues, thus increasing the reliability of heat tape or using other options that do not expose the condensate pipe to freezing environment.

New Venting Technologies

To address certain difficult installation situations, a new venting technology was recently developed to vent a condensing residential furnace and atmospheric combustion water heater through the same vent by reusing of the existing metal vent or masonry chimney with a new vent cap and appropriate liner(s). In the March 2015 NOPR, DOE conducted a sensitivity analysis to estimate the impact of such a technology on the installation cost of a condensing NWGF, but did not include the technology in the primary analysis.

ASAP stated that DOE's main analysis does not account for the latest venting technologies that can significantly reduce installation costs, such as that developed by M&G DuraVent. (ASAP, No. 0154–1 at p. 2) NRDC stated that the analysis shows that the DuraVent technology would deliver large average consumer savings for row homes and condominiums. (NRDC, No. 0134 at p. 6) ACEEE and ASE stated that DOE should consider DuraVent more fully in its main analysis as a venting alternative for orphaned water heaters. ACEEE understands that other manufacturers have developed their own products and are getting UL certification, and that many products will be widely available long before a new furnace standard takes effect. (ACEEE, No. 0113 at pp. 1–2; ASE, No. 0115 at p. 21) The Joint Congress Members and PG&E stated that new venting technologies are reducing the cost of venting condensing furnaces in even the most difficult circumstances, such as row houses. The Joint Congress Members stated that it is reasonable to expect that costs would be lower than estimated. (Joint Congress Members, No. 0161 at p. 3; PG&E, No. 0153 at p. 6) On the other hand, AGL Resources argued that DOE overestimated the capabilities of the DuraVent technology, and noted that per the manufacturer's guidelines, the Category IV liner portion of the product must always maintain at least a 45-degree angle. AGL Resources stated that DuraVent can only be used in very limited applications where the existing common vent has no horizontal sections, and where the furnace and water heater are side by side. AGL Resources stated that because of these limitations, DuraVent cannot be used in masonry chimneys. It added that

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[75] Carrier, *Single-Stage 4-Way Multipoise Condensing Gas Furnace Series A and B: Installation, Start-up, Operating and Service and Maintenance Instructions (IM–PG95SAS–07)* (2015).

[76] Goodman Manufacturing Company, L.P., *GMH95/GCH95/GME95/GCH9 Gas-Fired Warm Air Furnace Installation Instructions,* Houston, TX.

[77] Rheem Manufacturing Company, *Installation Instructions For Upflow, Downflow/Horizontal High Efficiency Condensing two-Stage Gas Furnaces RGRM, RGTM Series.*

DuraVent also requires annual maintenance. (AGL Resources, No. 0039 at pp. 8–9; AGL Resources, No. 0112 at pp. 13–15)

According to the available information, DuraVent is UL-approved for use with metal vents,[78] but data on the performance in the field are lacking. In addition, DOE recognizes that there are currently limitations of the DuraVent technology related to venting in masonry chimneys. Because of the uncertainty regarding applicability of DuraVent technology, DOE maintained its approach of conducting sensitivity analyses for this SNOPR. For these analyses, DOE only applied the DuraVent option to installations that could meet the DuraVent installation requirements, as it did in the March 2015 NOPR. DOE notes that while venting technology could lower installation costs, DOE must base its approach on currently available data and cannot speculate as to future developments in advanced venting technologies, but welcomes any available data.

Learning in Installation Costs

NRDC and ASAP commented that DOE should apply a learning curve to installation costs that are likely to decline, particularly for homes with challenging installation conditions for which there has been relatively little market experience. NRDC stated that keeping installation costs constant over time implicitly assumes that manufacturers and installers would not deliver any new venting technologies that can significantly reduce installation costs. (NRDC, No. 0134 at pp. 2, 6; ASAP, No. 0154–1 at p. 2) CEC expects that retrofit installation costs would decrease as the industry provides innovative solutions to address venting in all retrofits. (CEC, No. 0120 at p. 5) NRDC suggested including "learning curve" measures, and in particular, lower-cost installation measures that will likely emerge for homes with relatively challenging installation conditions for condensing furnaces. (NRDC, No. 0134 at p. 2; NRDC, No. 0186 at p. 2)

DOE acknowledges the potential for the cost of installing a condensing furnace to decline with experience, but it did not have information that would be required to quantify a learning curve for installation costs.

c. Comments on Installation Cost Results for Non-Weatherized Gas Furnaces

Goodman urged DOE to update its installation cost estimates based on the results presented in the AHRI–ACCA–PHCC contractor survey report to ensure that the installation costs are representative of real world issues faced by contractors and consumers in the field. (Goodman, No. 0135 at p. 2) AHRI also stated that installation costs for NWGFs are significantly underestimated. (AHRI, No. 0181 at p. 3) AHRI stated that according to its survey results, the average installation costs for all furnaces in all regions are over $1,000 more than what DOE estimated, and the distribution of installation costs is higher than DOE's distribution in both the North and the South. (AHRI, No. 0159 at pp. 44–46)

Goodman, PHCC, and ACCA stated that average installation costs from the AHRI–ACCA–PHCC survey range from $1,908 for new installations in the South to $2,730 for replacement installations in the North. (Goodman, No. 0135 at p. 2; PHCC, No. 0136 at p. 6; ACCA, No. 0158–2 at p. 6) Rheem and AHRI stated that survey data of actual contractors show replacement installation costs of two or more times DOE's estimates, depending on the type of furnace. (Rheem, No. 0142 at p. 4; AHRI, No. 0159 at p. 68) AHRI stated that the difference between DOE's installation cost estimates and survey results is unlikely to be due to the RS Means data that DOE used. Rather, AHRI stated that there is no evidence that DOE calibrated its installation cost estimates with market data. (AHRI, No. 0159 at p. 46) Southside Heating and Air Conditioning stated that its installation cost in Minnesota ranges from two to six times as much as DOE's estimate for non-condensing NWGFs. Southside Heating and Air Conditioning stated that its installation cost in Minnesota is triple DOE's installation cost for condensing NWGFs. (Southside Heating and Air Conditioning, No. 0044 at p. 139)

In response, the differences between total installation cost from available survey data and the costs provided in the March 2015 NOPR and September 2015 NODA could be due to various issues affecting both non-condensing and condensing NWGFs, such as: The cost of ductwork upgrades; baseline electrical installation costs; additional labor required in the baseline; underestimation of relining, resizing, or other adjustments of metal venting in the baseline; premium for emergency replacements; and premium installations that include other comfort-related features (*e.g.*, advanced thermostats, zoning, hypoallergenic filters, humidity controls). Also, the installation price varies widely by different contractors and areas of the country/region. For the SNOPR, DOE compared its estimates to the AHRI–ACCA–PHCC contractor survey report and other sources such as Home Advisor,[79] ImproveNet,[80] Angie's List,[81] HomeWyse,[82] Cost Helper,[83] Fixr,[84] CostOwl,[85] and Gas Furnace Guide,[86] and also consulted with RS Means staff to make its baseline installation cost estimates more comparable. It appears that much of the additional cost not included in the March 2015 NOPR is the same for a non-condensing and condensing furnace (such as ductwork, emergency replacement, etc.). The LCC impacts are driven by the differential between the non-condensing and condensing designs, so for the SNOPR did not add these additional costs.

Many stakeholders commented on the installation cost when replacing a non-condensing NWGF with a condensing NWGF. NiSource, Meeks, AAEA, Ubuntu, DC Jobs or Else, CA, Payne, Bishop, Indiana, Nayes, and A Ware stated that the installation cost of a condensing furnace is $1,500 to $2,500, which is higher than DOE's estimate. (NiSource, No. 0127 at p. 3; Meeks, No. 0140 at p. 1; AAEA, No. 0056 at p. 1; Ubuntu, No. 0057 at p. 1; Ubuntu, No. 0191 at p. 1; DC Jobs or Else, No. 0059 at p. 1; CA, No. 0061 at p. 1; Payne, No. 0075 at p. 1; Bishop, No. 0076 at p. 1;

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[78] M&G DuraVent's FNS 80/90 Combination Cat I and Cat IV gas vent system is UL listed to applicable portions of ULC S636/UL1738, UL1777, and UL441. (See *www.duravent.com/Product.aspx?hProduct=49.*)

[79] Home Advisor, *How Much Does a New Gas Furnace Cost?* (Available at: *http://www.homeadvisor.com/cost/heating-and-cooling/gas-furnace-prices/*) (Last accessed April 26, 2016).

[80] Improvenet, *Furnace Installation Cost Guide* (Available at: *http://www.improvenet.com/r/costs-and-prices/furnace-installation-cost-estimator*) (Last accessed April 26, 2016).

[81] Angie's List, *How Much Does it Cost to Install a New Furnace* (Available at: *https://www.angieslist.com/articles/how-much-does-it-cost-install-new-furnace.htm*) (Last accessed April 26, 2016).

[82] HomeWyse, *Cost to Install a Furnace* (Available at: *http://www.homewyse.com/services/cost_to_install_furnace.html*) (Last accessed April 26, 2016).

[83] Cost Helper, *How Much Does a Furnace Cost?* (Available at: *http://home.costhelper.com/furnace.html*) (Last accessed April 26, 2016).

[84] FIXr, *Gas Central Heating Installation Cost* (Available at: *http://www.fixr.com/costs/gas-central-heating-installation*) (Last accessed April 26, 2016).

[85] CostOwl.com, *How much Does a New Furnace Cost?* (Available at: *http://www.costowl.com/home-improvement/hvac-furnace-replacement-cost.html*) (Last accessed April 26, 2016).

[86] Gas Furnace Guide, Gas Furnace Prices and Installation Cost Comparison (Available at: *http://gasfurnaceguide.com/compare/*) (Last accessed April 26, 2016).

Indiana, No. 0094 at p. 1; Nayes, No. 0055 at p. 1; A Ware, No. 0204 at p. 1)

Laclede stated that DOE significantly understated the incremental costs to install a condensing furnace compared to a non-condensing furnace. (Laclede, No. 0141 at p. 5) Washington Gas stated that according to contractors in its service territory, a replacement condensing furnace could be as much as 50 percent higher than the installation cost of a replacement non-condensing furnace. (Washington Gas, No. 0133 at p. 2) SoCalGas stated that data for production housing in California demonstrates that the installed cost for a 92-percent furnace is higher than that of an 82-percent furnace by $385, $495, and $551 for 40, 60, and 80 kBtu/h, respectively. (SoCalGas, No. 0132–2 at p. 7; SoCalGas, No. 0132–6 at pp. 10–11) Goodman, PHCC, and ACCA stated that the installation costs for condensing furnaces from their survey is between $500 and $600 more than for non-condensing furnaces. (Goodman, No. 0135 at p. 2; PHCC, No. 0136 at p. 6; ACCA, No. 0158–2 at p. 6) PHCC and ACCA stated that because contractors almost always install condensing furnaces where the economic returns are acceptable to consumers, the results of their survey represent a lower bound on the costs that might be incurred under a national condensing NWGF standard. (PHCC, No. 0136 at p. 11; ACCA, No. 0158–2 at p. 11) AHRI stated that the survey responses do not include costs for replacement installations that are expensive, difficult, and require added system or site work. (AHRI, No. 0159 at p. 68)

As noted previously, installation cost varies widely for different contractors and areas of the country. For both the March 2015 NOPR and September 2015 NODA, the average incremental installation cost for a condensing NWGF was $564 (in 2014$) for a retrofit installation, which matches the contractor survey and data provided by SoCalGas. For the SNOPR, revised its estimates using RS Means 2015 data such that the average cost incremental is $528 in 2015$ for a retrofit installation.

Table IV.15 shows the fraction of installations impacted and the average cost for each of the installation cost adders in replacement applications. The estimates of the fraction of installations impacted were based on the furnace location (primarily derived from information in the 2009 RECS) and a number of other sources that are described in chapter 8 of the SNOPR TSD.

TABLE IV.14—ADDITIONAL INSTALLATION COSTS FOR NON-WEATHERIZED GAS FURNACES IN REPLACEMENT APPLICATIONS

Installation cost adder	Replacement installations impacted (percent)	Average cost (2015$)
Non-Condensing Furnaces		
Updating Flue Vent*	2	$612
Condensing Furnaces		
New Flue Venting (PVC)	100	263
Combustion Air Venting (PVC)	59	263
Concealing Vent Pipes	9	379
Orphaned Water Heater	19	702
Condensate Removal	100	47

* For a fraction of installations, this cost includes the commonly-vented water heater vent connector, chimney relining, and vent resizing.

Table IV.15 shows the estimated fraction of new home installations impacted and the average cost for each of the adders.

TABLE IV.15—ADDITIONAL INSTALLATION COSTS FOR NON-WEATHERIZED GAS FURNACES IN NEW HOME APPLICATIONS

Installation cost adder	New construction installations impacted (percent)	Average cost (2015$)
Non-Condensing Furnaces		
New Flue Vent (Metal)*	100	$1,364
Condensing Furnaces		
New Flue Venting (PVC)	100	178
Combustion Air Venting (PVC)	60	176
Concealing Vent Pipes	3	113
Orphaned Water Heater	45	1,061
Condensate Removal	100	35

* For a fraction of installations, this cost includes the commonly-vented water heater vent connector.

d. Installation Cost for Mobile Home Gas Furnaces

For the March 2015 NOPR, DOE included basic installation costs for MHGFs described above for NWGFs. DOE also included costs for venting and condensate removal. Freeze protection, a condensate pipe, condensate neutralizer, and an additional electricity connection are accounted for in the cost of condensate removal when where applicable.

JCI stated that for replacement installations in mobile homes, significant rebuilding of closets and/or alcoves may be required to accommodate a standard residential furnace design. JCI also stated that the design of venting systems, return air connections, and supply air ductwork are all different for standard residential furnace designs, which increase the complexity and cost for a retrofit application. JCI stated that these additional costs are not included in DOE's analysis to their full extent. (JCI, No. 0148 at p. 6)

In response, DOE notes that MHGFs are usually installed in tight spaces and often require space modifications if the replacement furnace dimensions are different from those of the existing furnace. Manufacturer literature shows that some condensing furnaces are wider and shorter than existing non-condensing furnaces. DOE notes that most of models at the proposed standard at 92 percent AFUE are similar in size to the existing non-condensing furnaces. DOE performed a sensitivity analysis to assess the impact of adding the costs of dealing with space constraints that could be encountered when a standard condensing MHGF replaces an older mobile home-specific furnace.

MHI stated that the dedicated vent system required for 92percent AFUE MHGFs, which alters the performance characteristics of common venting, is especially problematic because these furnaces are only produced for the mobile home market. (MHI, No. 0129 at p. 1) DOE disagrees that a dedicated vent system would be problematic because furnaces installed in mobile homes must be approved by the U.S. Department of Housing and Urban Development, which requires special sealed combustion venting that cannot be commonly vented.

For further details on the installation cost methodology, see chapter 8 of the SNOPR TSD.

3. Annual Energy Consumption

For each sampled household or building, DOE determined the energy consumption for a NWGF or MHGF at different efficiency levels using the approach described in section IV.E of this notice.

For the LCC analysis, DOE does not include the increase in energy use associated with the rebound effect discussed in section IV.E.1.d because the increased furnace usage associated with the rebound effect provides consumers with increased value (*e.g.,* a more comfortable indoor temperature). DOE believes that, if it were able to monetize the increased value to consumers of the rebound effect, this value would be similar in monetary value to the foregone energy savings. Therefore, the economic impacts on consumers, with or without including the rebound effect in the analysis, are the same.

Several stakeholders believe that the cost of increased energy use due to the rebound effect should be accounted for in the LCC analysis. AGA stated that exclusion of direct rebound effect energy costs from the LCC analysis is inconsistent with DOE's definition of LCC analysis as a cost metric. AGA stated that the definition of life-cycle cost demonstrates that LCC is a cost metric that does not encompass non-financial consumer benefits. (AGA, No. 0118 at p. 32) Ingersoll Rand and Laclede commented that DOE underestimated the economic impacts of standards by not accounting for the reduction in energy savings due to the rebound effect. Laclede stated that the rebound effect is a cost with no associated monetary offsets. (Ingersoll Rand, No. 0156 at pp. 6, 9; Laclede, No. 0141 at pp. 36–37) NPGA, Ingersoll Rand, and Laclede stated that DOE should consider the direct rebound effect in total operating costs. (NPGA, No. 0130 at p. 3; Ingersoll Rand, No. 0156 at p. 26; Laclede, No. 0141 at p. 37) AHRI stated that DOE provides no reasoned basis for not applying the rebound effect in the LCC analysis as it does in the NIA. AHRI stated that although comfort is real, it has no real monetary value. AHRI stated that the cost of the new higher-efficiency furnace must be compared against the actual monthly energy bill paid to operate the furnace. (AHRI, No. 0159 at pp. 21, 68) Ingersoll Rand stated that including fuel switching but not the rebound effect in the LCC analysis arbitrarily lowers the LCC of the space heating options in the standards case. (Ingersoll Rand, No. 0156 at p. 9)

The approach suggested by the comments would place no value on the increased comfort associated with the rebound effect, yet clearly consumers are paying for that service in their energy bill. DOE could reduce the energy cost savings to account for the rebound effect, but then it would have to add the value of increased comfort in order to conduct a proper economic analysis. The approach that DOE uses– not reducing the energy cost savings to account for the rebound effect and not adding the value of increased comfort– assumes that the value of increased comfort is equal to the monetary value of the higher energy use. Although DOE cannot measure the actual value of increased comfort to the consumers, the monetary value of the higher energy use represents a lower bound for this quantity. For these reasons, DOE is retaining its current approach to rebound effect.

4. Energy Prices

For the September 2015 NODA, DOE derived average annual residential and commercial electricity, natural gas, and LPG prices for States and various regions using data from the Energy Information Administration (EIA).[87] [88] [89] DOE calculated an average annual regional residential energy prices by: (1) Estimating an average residential price for each utility in the region (by dividing the residential revenues by residential sales); and (2) weighting each utility by the number of residential consumers it served in that region. DOE used the same methodology for average annual regional commercial energy prices. Further details may be found in chapter 8 of the SNOPR TSD.

SoCalGas stated that DOE used questionable values for marginal electricity prices in California in its LCC analysis. 3 (SoCalGas, No. 0132–2 at p. 5) MUD stated that its average residential natural gas rate has averaged $5.41/MMBtu during the past 48 months, whereas the forecasted prices in *AEO2014* for Census Division 4 are $10/MMBtu in 2015. MUD stated that *AEO2015* provides a lower estimate. (MUD, No. 0144 at pp. 2–3) In response, DOE calculated average annual energy prices based on historical data from EIA. DOE only used *AEO* forecasts to project future energy price trends. For this SNOPR analysis, DOE included the most recent EIA energy price data.

Average electricity and natural gas prices from the EIA data were adjusted using seasonal marginal price factors to derive monthly marginal electricity and natural gas prices.

Several stakeholders criticized DOE's methodology to determine marginal energy prices. AGA stated that a comparison of AGA's tariff-based marginal gas price factors, which are based on a dataset of about 200 tariffs, and DOE's EIA-based marginal gas price factors shows that DOE's factors significantly overestimate marginal prices. AGA stated that the AGA tariff-based marginal price methodology uses a conservative approach to calculate marginal prices because merely subtracting fixed customer charges from the customer bill does not account for all fixed charges found in some utility rate structures that could decrease marginal rates further. AGA further stated that DOE should revise its economic analysis to incorporate marginal gas price factors calculated with tariff data provided by AGA. (AGA, No. 0118 at pp. 21–23) Vectren stated that AGA calculated marginal gas prices based on actual tariff data, and found that DOE's estimated national averages are between 6 and 11 percent too high, depending on the season. (Vectren, No. 0111 at pp. 3–4) The GTI report submitted by SoCalGas stated that DOE's marginal gas prices differ from gas company tariff data. (SoCalGas, No. 0132–7 at p. v)

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[87] U.S. Department of Energy—Energy Information Administration, Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data (2014) available at: *www.eia.doe.gov/cneaf/electricity/page/eia826.html.*

[88] U.S. Department of Energy—Energy Information Administration, Natural Gas Navigator (2014), available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm).*

[89] U.S. Department of Energy—Energy Information Administration, 2014 State Energy Consumption, Price, and Expenditure Estimates (SEDS) (2014), available at: *www.eia.doe.gov/emeu/states/_seds.html.*

To evaluate AGA's tariff-based marginal gas price factors, DOE developed seasonal marginal price factors for 23 gas tariffs provided by the Gas Technology Institute for the 2016 residential boilers energy conservation standards rulemaking,[90] and compared them to marginal price factors developed by DOE from the EIA data. The winter price factors used by DOE are generally comparable to those computed from the tariff data, indicating that DOE's marginal price estimates are reasonable at average usage levels. The summer price factors are also generally comparable. Of the 23 tariffs analyzed, eight have multiple tiers, and of these eight, six have ascending rates and two have descending rates. The tariff-based marginal factors use an average of the two tiers as the commodity price. A full tariff-based analysis would require information about the household's total baseline gas usage (to establish which tier the consumer is in), and a weight factor for each tariff that determines how many customers are served by that utility on that tariff. These data are generally not available in the public domain. DOE's use of EIA State-level data effectively averages overall consumer sales in each State, and so incorporates information about all utilities. DOE's approach is, therefore, more representative of a large group of consumers with diverse baseline gas usage levels than an approach that uses only tariffs. For more details on the comparative analysis, refer to appendix 8D of the SNOPR TSD.

Laclede stated that DOE's marginal monthly natural gas prices are much higher than actual marginal prices because they are an average across multiple blocks. Laclede stated that true marginal pricing uses the tail block tariff rate. (Laclede, No. 0141 at pp. 18–19) Laclede compared actual marginal tail block tariff rates in five States and found DOE's prices to be two to three times higher. (Laclede, No. 0141 at pp. 29–30) In response, DOE finds that the use of tail blocks with low rates for some utilities, as the commenter recommends, does not provide sufficient information to determine the marginal prices that consumers pay. The information required is: What tariff structures are used most commonly by utilities; how many consumers are on each tariff, and for those consumers, what block is relevant to their monthly consumption level. The EIA data that DOE used to estimate marginal gas prices implicitly incorporate this information. Accordingly, DOE is maintaining its existing methodology, because it is equivalent to a consumption-weighted average marginal price across all households in the State.

To estimate energy prices in future years for the March 2015 NOPR, DOE multiplied the average regional energy prices by the forecast of annual change in national-average residential energy price in the Reference case from *AEO2014*, which has an end year of 2040. 80 FR 13120, 13150 (March 12, 2015).

AGA stated that DOE should use *AEO 2015* energy price forecasts instead of those from *AEO 2014* because of the significant impacts of the updated energy price data on the LCC results. (AGA, No. 0118 at pp. 5, 23) DOE updated the energy price forecasts to *AEO 2015* for the September 2015 NODA and the SNOPR. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

Laclede stated that gas prices have remained relatively low over the past 3 years, and there is nothing that has occurred to indicated that they will be materially higher in the future. (Laclede, No. 0141 at p. 12) Laclede commented that the *AEO* has overstated gas prices for the past 10 years and understated electricity prices for the past 16 years. (Laclede, No. 0141 at p. 20) Laclede stated that DOE overestimated the incremental benefits from condensing furnaces by failing to use accurate estimates of how natural gas commodity, transportation, and delivery costs are likely to change, and how such cost changes are passed to consumers under existing utility rate design and ratemaking procedures. (Laclede, No. 0141 at p. 5)

DOE acknowledges that the Reference case projection of natural gas prices in *AEO 2015* may seem high in the light of recent natural gas market conditions. However, it is important to bear in mind that the *AEO* is focused on long-term projections. The LCC analysis requires a projection for a period of approximately 20 years beginning in 2022, and market conditions in that period may be quite different from the present situation. DOE acknowledges that the *EIA* generally overestimated natural gas prices in *AEO 2006* through *AEO 2012,* but before that there was a tendency to underestimate.[91] There also has been a tendency to underestimate electricity prices, but beginning with *AEO 2008,* the underestimates have been slight. Given the difficulty of projecting the two key drivers—the world oil price and the macroeconomic growth baseline—that are determined exogenously to the model used to prepare the AEO, DOE maintains that the patterns of difference between AEO projections and actual energy prices do not reflect a systematic bias in the model used to prepare the AEO or the assumptions. DOE expects to use energy price projections from *AEO 2016,* which will incorporate the latest available information, for the final rule.

The Joint Consumer Commenters surmised that reduced demand for natural gas due to increased furnace efficiency would lower the price of the fuel. The Joint Consumer Commenters stated that given the size of the residential gas heating market and the magnitude of the reduction in demand, the reduction in price for natural gas could raise the consumer benefits significantly. (Joint Consumer Commenters, No. 0123 at pp. 21–23)

DOE acknowledges that reduced demand for natural gas due to increased furnace efficiency could put downward pressure on the price of natural gas, which could provide additional consumer benefits. However, the growing use of revenue decoupling, which decouples a utility's revenues from its volume of sales,[92] makes it difficult to predict the magnitude of an effect on retail natural gas prices. In addition, DOE has previously noted that when gas prices drop in response to lower demand, which in turn results in lower output of existing natural gas production capacity, consumers benefit but producers suffer. In economic terms, the situation represents a benefits transfer to consumers (whose expenditures fall) from producers (whose revenue falls equally).[93] If the revenues and costs of producers both fall, the change in natural gas prices represents a net gain to society. Determining what takes place in the gas production sector when gas prices decline is complex, and at this time, DOE is not able to reasonably determine the extent of transfers associated with a decrease in gas prices that may result from appliance standards.

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[90] GTI provided a reference located in the docket of DOE's rulemaking to develop energy conservation standards for residential furnaces. (Docket No. EERE–2014–BT–STD–0031–0118) (Available at *www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0118*). DOE is also including this information in the docket for the present rulemaking at *www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0047-0068.*

[91] Each year, EIA produces an AEO Retrospective Review document, which presents a comparison between realized energy outcomes and the Reference case projections included in previous editions of the AEO. (Available at: *https://www.eia.gov/forecasts/aeo/retrospective/*).

5. Maintenance and Repair Costs

Maintenance costs are associated with maintaining the operation of the product. Repair costs are associated with repairing or replacing product components that fail in an appliance.

For the March 2015 NOPR and September 2015 NODA, DOE estimated maintenance costs for residential furnaces at each considered efficiency level using a variety of sources, including 2013 RS Means,[94] manufacturer literature, and information from expert consultants. DOE estimated the frequency of annual maintenance using data from RECS 2009 and a 2008 consumer survey[95] to derive the frequency with which furnace owners perform maintenance. DOE assumed that condensing furnaces require more maintenance than non-condensing furnaces. DOE also accounted for checking the condensate withdrawal system and regular replacement of the condensate neutralizer, if present. For the standby mode and off mode standard, DOE assumed that no additional maintenance is required.

Laclede stated that DOE significantly understated the incremental costs to maintain a condensing furnace compared to a non-condensing furnace. (Laclede, No. 0141 at p. 5) Johnson stated that DOE failed to take into account the higher service costs of condensing furnaces. (Johnson, No. 0190 at p. 1) Carrier stated that condensing and non-condensing furnaces have different service and maintenance requirements that are not accounted for in the LCC analysis. Carrier stated that according to contractors, condensing furnaces take 60 minutes to maintain, while non-condensing furnaces only require 30 minutes. Carrier stated that condensing furnaces are more complex than non-condensing furnaces because of additional components like the condensate management system and secondary heat exchanger, which need to be maintained. Carrier stated that utilizing the most common contractor hourly rates of $70/hour, $90/hour, or $110/hour, homeowners will pay between $35 and $55 more annually to properly maintain a condensing furnace compared to a non-condensing furnace. (Carrier, No. 0116 at pp. 31–32)

For the March 2015 NOPR and September 2015 NODA, DOE estimated on average the labor hours for a non-condensing furnace maintenance to be 1.65 hours (which includes a 0.5 hour trip charge). For condensing furnaces, DOE added 0.155 hours to check the secondary heat exchanger and condensate system (including the condensate neutralizer). Based on RS Means 2013, the national average labor cost used for maintenance and repair was $78/hour in 2013$. For the SNOPR, DOE reexamined the issue of maintenance costs but found little evidence that currently contractors are charging more for maintenance of condensing compared to non-condensing furnaces. Nevertheless, DOE also updated its labor costs to 2015 RS Means (with a national average of $82 in 2015$) and the overall cost estimates fall within typical $70–200 maintenance charges from different online sources listed in appendix 8F of the SNOPR TSD.

Southside Heating and Air Conditioning stated that a new condensate neutralizer with a 1-year lifetime costs $50. (Southside Heating and Air Conditioning, No. 0044 at p. 244) For the March 2015 NOPR and September 2015 NODA, DOE applied a $56 cost of the neutralizer (which is also included in the installation cost) with an average 3 year lifetime. For the SNOPR, revised the neutralizer cost to $58, but kept the 3-year average lifetime based on several sources listed in appendix 8F of the SNOPR TSD.

For the March 2015 NOPR and September 2015 NODA, DOE estimated repair costs for residential furnaces at each considered efficiency level using a variety of sources, including 2013 RS Means,[96] manufacturer literature, and information from expert consultants. For repair costs, DOE accounted for repair of the ignition, gas valve, controls, and inducer fan, as well as the furnace fan blower. To determine components' service lifetime, DOE used a Gas Research Institute (GRI) study.[97] For standby mode and off mode standard, DOE assumed that no additional repair is required.

Darling stated that inadequate ductwork is likely to be present in most households and may restrict the airflow, thereby causing the main blower motor to fail after only a few years of operation. Darling commented that the cost of these high-efficiency motors is much greater than the difference in cost between a non-condensing furnace and a condensing furnace. (Darling, No. 0065 at p. 1) In response, DOE accounted for the repair of the furnace fan based on the technologies that are required to meet the 2019 furnace fan standard. The lifetime distribution accounts for a fraction of furnace fans that fail after only a few years. DOE notes that the 2019 furnace fan standards require constant-torque BPM motors (commonly referred to as X13) for both non-condensing and condensing NWGFs, which maintain a predetermined torque in each airflow-control setting as operating conditions change. Thus, the motors are not impacted by the quality of the ductwork. For MHGFs, the 2019 furnace fan standard is an improved PSC design, which is the most common design for both non-condensing and condensing furnaces. DOE notes that the ductwork issues such as airflow restrictions are much less common for mobile homes.

Goodman commented that because the technologies associated with the max-tech level for standby mode and off mode are new to the market, data on the failure modes and repair costs are limited. (Goodman, No. 0135 at pp. 4–5) Goodman stated that DOE failed to account for the new technology associated with standby mode and off mode that entails an additional learning curve for contractors, which may increase maintenance and repair costs. (Goodman, No. 0135 at p. 4) In response, DOE notes that the LL–LTX technology, which is intended to address standby mode and off mode energy use, is not very different from LTX technology that is found in most furnaces today. The primary difference is that LL–LTX technology is slightly larger and heavier than LTX. Furthermore, there are many furnace models on the market with standby consumption less than the proposed standard levels for standby mode and off mode. Therefore, DOE does not believe that the standby mode and off mode max-tech technology would require additional maintenance or repair.

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[92] See discussion of revenue decoupling in section IV.M.

[93] See discussion in the June 2011 DFR. 76 FR 37408, 37487–88 (June 27, 2011).

[94] RS Means Company Inc., *RS Means Facilities Maintenance & Repair Cost Data*. Kingston, MA (2015).

[95] Decision Analysts, 2008 American Home Comfort Study: Online Database Tool 2009) (Available at: *www.decisionanalyst.com/Syndicated/HomeComfort.dai*).

[96] RS Means Company Inc., *RS Means Facilities Maintenance & Repair Cost Data*. Kingston, MA (2013).

[97] Jakob, F.E., J.J. Crisafulli, J.R. Menkedick, R.D. Fischer, D.B. Philips, R.L. Osbone, J.C. Cross, G.R. Whitacre, J.G. Murray, W.J. Sheppard, D.W. DeWirth, and W.H. Thrasher, Assessment of Technology for Improving the Efficiency of Residential Gas Furnaces and Boilers, Volume I and II—Appendices (September 1994) Gas Research Institute, Report No. GRI–94/0175 (Available at *www.gastechnology.org/reports_software/Pages/default.aspx*).

For this SNOPR, DOE updated the RS Means data to 2015.[98] For more details on DOE's methodology for calculating repair costs, see appendix 8F of the SNOPR TSD.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of furnace lifetimes using a combination of data on shipments and the furnace stock (see section IV.G) and RECS data on the age of furnaces in the sampled homes. The data allowed DOE to develop a survival function, which provides a range from minimum to maximum lifetime, as well as an average lifetime. The average lifetime estimated for the NOPR and NODA was 21.5 years for NWGFs and MHGFs.

Several stakeholders expressed concern that DOE's estimated average lifetime is too high. AGA, AGL Resources, Vectren, and SoCalGas stated that DOE overestimated the average lifetime of NWGFs compared to industry estimates. AGA stated that industry estimates of residential gas furnace lifetime are 15 or 16 years. (AGA, No. 0036 at p. 3; AGA, No. 0040–2 at p. 3; AGL Resources, No. 0039 at p. 2; AGL Resources, No. 0112 at p. 3; Vectren, No. 0111 at pp. 4–5; SoCalGas, No. 0132–2 at p. 5; SoCalGas, No. 0132–6 at p. 9) AGA stated that DOE overestimated the average lifetime of residential gas furnaces compared to the lifetimes included in DOE's literature review. (AGA, No. 0118 at pp. 5, 23–24) AGL Resources stated that DOE's lifetime estimate for residential gas furnaces is significantly higher than previous DOE values and other furnace lifetime estimates from Appliance Magazine and NAHB of 15–17.5 years. (AGL Resources, No. 0039 at p. 2; AGL Resources, No. 0112 at p. 3) NAHB stated that its lifetime estimates for furnaces are closer to 16 or 18 years. (NAHB, No. 0044 at p. 318) Vectren stated that the bulk of furnace lifetime estimates from DOE's literature review are between 15 and 18 years. (Vectren, No. 0111 at p. 5) SoCalGas stated that Canada used a product lifetime of 15 years in its furnace efficiency standard analysis in January 2014. (SoCalGas, No. 0132–2 at p. 5; SoCalGas, No. 0132–6 at p. 9)

In response, DOE was unable to obtain data to substantiate the cited industry estimates. The furnace lifetime estimates from DOE's literature review, which includes Appliance Magazine, range between 15 and 20 years,[99] which is below the average lifetime estimated for the NOPR and NODA, but the basis for these estimates is often not clear. DOE found that the Canadian analysis used an average lifetime of 20 years.[100] DOE believes that its method described in a journal article,[101] which uses a combination of actual shipment and survey data, is more reliable, and also better suited to provide a distribution of lifetimes that is appropriate for U.S. conditions. In response to AGL Resources' statement that DOE's lifetime estimate for residential gas furnaces is significantly higher than previous DOE values, the mean lifetime estimated in the March 2015 NOPR and September 2015 NODA (21.5 years) is lower than the mean lifetime of 23.6 years for non-weatherized gas furnaces used in the 2011 DFR, which is based on more recent data.

AGL Resources criticized DOE for using a proprietary method to determine the lifetime and relying on what it argued were questionable assumptions and on incomplete AHRI unitary shipment data to arrive at its estimate. (AGL Resources, No. 0039 at p. 2; AGL Resources, No. 0112 at p. 3)

For the March 2015 NOPR and September 2015 NODA, DOE determined the lifetime based on the methodology described in a recent journal paper [102] and using publicly-available sources from AHRI,[103] the U.S. Census's *American Housing Survey* (AHS) from 1974–2011,[104] and RECS from 1990 to 2009.[105] The historical shipments (using AHRI data prior to 1996) are also provided in DOE's analytical tools for the NOPR and NODA. DOE also conducted a sensitivity analysis using different furnace lifetime scenarios (see appendix 8G in the SNOPR TSD). In addition for the SNOPR, to better account for differences in lifetime due to furnace utilization, DOE determined separate lifetimes for the North and South for the shipments analysis. The average lifetime used in the SNOPR is 20.1 years in the North and 23.4 years in the South for both NWGFs and MHGFs, compared to 21.5 years nationally in the NOPR and NODA.

AGL Resources also stated that DOE used very high present-day fuel switching trends to determine furnace lifespan. AGL Resources stated that higher rates of fuel switching lead to an overestimation of product lifetime in the DOE model as retired furnaces are replaced by heat pumps and never counted as a "failure" in the DOE model. (AGL Resources, No. 0112 at p. 3) The lifetime methodology takes into account indirectly the impact of product switching that has occurred in the past by accounting for the actual number of furnace installations over time from AHS and RECS (which includes early replacements, non-replacements, product switching, demolitions, *etc.*).

Rheem and AGL Resources stated that the lifetime is dependent on furnace usage. (Rheem, No. 0142 at p. 9; AGL Resources, No. 0112 at p. 3) The distribution of furnace lifetimes used in the LCC analysis accounts for a wide range of furnace utilization.

AGL Resources stated that historical lifetime data primarily track non-condensing furnaces that had little electronic control, a simple heat exchanger design, and atmospheric venting. AGL Resources stated that condensing furnaces have more components that can fail, so data for non-condensing models cannot be used to estimate condensing furnace life expectancy. (AGL Resources, No. 0112 at p. 3) Laclede suggested that condensing furnaces have shorter lifetimes by stating that moving to an all-condensing furnace market would decrease furnace life. (Laclede, No. 0141 at p. 32)

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[98] RS Means Company Inc., RS Means Facilities Maintenance & Repair Cost Data. Kingston, MA (2015) (available at *http://www.rsmeans.com/*).

[99] See appendix 8G of the SNOPR TSD for a listing of the sources.

[100] Rosalyn Cochrane, Team Leader Standards Development HVAC–R, Energy Sector, Natural Resources Canada/Government of Canada. Personal communication, May 18, 2016.

[101] Lutz, J., A. Hopkins, V. Letschert, V. Franco, and A. Sturges, Using national survey data to estimate lifetimes of residential appliances. *HVAC&R Research,* 2011. 17(5): pp. 28 (Available at: *www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166*) (Last Accessed: April 26, 2016).

[102] Lutz, J., A. Hopkins, V. Letschert, V. Franco, and A. Sturges, Using national survey data to estimate lifetimes of residential appliances, *HVAC&R Research* (2011) 17(5): pp. 28 (Available at: *www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166*).

[103] Air-Conditioning Heating and Refrigeration Institute. Historical Shipments Data (Available at: *http://www.ahrinet.org/site/497/Resources/Statistics/Historical-Data/Furnaces-Historical-Data*).

[104] U.S. Census Bureau: Housing and Household Economic Statistics Division, *American Housing Survey,* Multiple Years (1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, and 2011) (Last accessed March, 2014) (Available at: *www.census.gov/programs-surveys/ahs/*).

[105] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey (RECS),* Multiple Years (1990, 1993, 1997, 2001, 2005, and 2009) (Last accessed January 7, 2015) (Available at: *www.eia.gov/consumption/residential/*).

DOE acknowledges that the data it used to derive furnace lifetimes primarily refer to non-condensing furnaces. However, the one source it found on lifetime of condensing furnaces[106] shows the same lifetime (18 years) as other sources provide for non-condensing furnaces. In addition, DOE reviewed warranty information primarily related to heat exchangers and did not find any significant differences between condensing and non-condensing furnaces. If manufacturers expect condensing furnaces to have a shorter lifetime than non-condensing furnaces, it seems likely that the warranty periods would be different. Based on the information reviewed, DOE maintained the same lifetime for condensing and non-condensing furnaces in the SNOPR.

Chapter 8 of the SNOPR TSD provides further details on the methodology and sources DOE used to develop furnace lifetimes.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective. DOE estimated a distribution of residential discount rates for NWGFs and MHGFs based on the opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs. For the NOPR, DOE estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances[107] (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended or new standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. For the March 2015 NOPR, DOE tentatively determined that the average residential discount rate across all types of household debt and equity and income groups, weighted by the shares of each class, is 4.5 percent. 80 FR 13120, 13151 (March 12, 2015).

AHRI stated that DOE inappropriately uses average, not marginal, sources of funds to calculate discount rates. AHRI commented that there is no evidence that consumers draw from or add to their collection of debt and asset holdings approximately in proportion to their current holdings, as DOE claims; rather, consumers have very limited options to raise funds, particularly in the magnitude of $3,000–$54,000 for a new furnace. AHRI argued that only a minority of consumers will be able to use cash or other savings to pay for a furnace replacement. AHRI stated that except for minor purchases, most households access additional funds from credit card debt. AHRI stated that refinancing a mortgage is impractical to purchase a new appliance, and other equity types are not liquid, so other forms of consumer debt are the only marginal source of funds available. AHRI stated that surveys demonstrate that consumers have little savings to finance a furnace purchase, and that 55 percent of consumers use some sort of financing to purchase HVAC equipment. AHRI stated that the true marginal discount rates for consumers are much more likely to cluster around 8–9 percent than around 3–5 percent, as DOE assumed in the NOPR. (AHRI, No. 0159 at pp. 38–43) Rheem stated that the LCC analysis uses unrealistically low consumer discount rates when consumers are known to be unable to meet emergencies from cash or savings, and the actual marginal source of funds is high interest debt. (Rheem, No. 0142 at p. 4)

In response, DOE maintains that the interest rate associated with the specific source of funds used to purchase a furnace (*i.e.,* the marginal rate) is not the appropriate metric to measure the discount rate as defined for the LCC analysis. The marginal interest rate alone would only be the relevant discount rate if the consumer were restricted from re-balancing their debt and asset holdings (by redistributing debt and assets based on the relative interest rates available) over the entire time period modeled in the LCC analysis. The LCC is not analyzing a marginal decision; rather, it estimates net present value over the lifetime of the product, so the discount rate needs to reflect the opportunity cost of both the money flowing in (through operating cost savings) and out (through upfront cost expenditures) of the net present value calculation. In the context of the LCC analysis, the consumer is not only discounting based on their opportunity cost of money spent today, but instead, they are also discounting the stream of future benefits. On the one hand, a consumer could pay for an appliance with cash, thereby forgoing putting that same amount of money into one of the interest earning assets to which they might have access. On the other hand, a consumer could pay for the initial purchase by going into debt. If they do this, they will face the cost of capital at the interest relevant for that purchase; however, they will receive a stream of future benefits in terms of energy savings that they could either put towards paying off that or other debts, or towards assets, depending on the restrictions they face in their debt payment requirements and the relative size of the interest rates on their debts and assets. All those interest rates are relevant, as they all reflect direct costs of borrowing, or opportunity costs of money either now or in the future. DOE maintains that the best proxy for this re-optimization of debt and asset holdings over the lifetime of the LCC analysis is to assume that the distribution of debts and assets in the future will be proportional to the distribution of debts and assets historically. Given the long time horizon modeling in the LCC, the application of a marginal rate alone would be inaccurate. DOE's methodology for deriving residential discount rates is in line with the weighted-average cost of capital used to estimate commercial discount rates. For these reasons, DOE is maintaining its existing approach to discount rates, but it included data from the 2013 SCF and updated several other data sources. The average rate in the SNOPR analysis across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent for NWGFs and 4.7 percent for MHGFs.

NAHB stated that a mortgage rate does not capture a market participant's time value of money, as mortgage rates are determined by institutional factors.

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[106] *http://www.neep.org/sites/default/files/resources/A5_Mid_Atlantic_TRM_V2_FINAL_0.pdf.*

[107] The Federal Reserve Board, *Survey of Consumer Finances* (1995, 1998, 2001, 2004, 2007 and 2010) (Available at: *www.federalreserve.gov/pubs/oss/oss2/scfindex.html*) (Last accessed March 15, 2016).

NAHB also commented that rates on liquid assets or assets that trade frequently and easily in well-established secondary markets are equally inappropriate for housing. NAHB argued that once installed, it is difficult and costly to disconnect and sell a furnace like one could sell a mutual fund or withdraw funds from a money market account. NAHB stated that for owner-occupied housing, a reasonable choice for a nominal rate would be the rate households pay on credit card debt. (NAHB, No. 0124 at p. 3)

The time value of money (particularly for the LCC) is the opportunity cost of that money: The value it would have had, had it been applied to another investment or used to pay off another debt. DOE agrees that a mortgage rate by itself does not capture a market participant's time value of money, but a consumer's choice of composition of their debt and asset portfolio provides insight into a consumer's time value of money. Also, while a furnace itself is not a readily tradable commodity, the money used to purchase it and the energy cost savings accruing to it over time flow from and to a household's pool of debt and assets, including mortgages, mutual funds, money market accounts, *etc.* Thus, the weighted-average interest rate on debts and assets provides a reasonable proxy for a household's opportunity cost (and discount rate) relevant to future energy savings.

Laclede stated that DOE's discount rates are very low. Laclede cited Ruderman *et al.*[108] for what it argues are a range of more realistic discount rates for different residential appliances from 1972 to 1980. Laclede stated that DOE should use discount rates ranging from 25 percent to 100 percent in increments of 25 percent. (Laclede, No. 0141 at pp. 16–18)

In response, DOE notes that Ruderman *et al.* and its citations (*e.g.*, Hausman)[109] address implicit discount rates, which are not appropriate in the framework of the LCC analysis. The implicit discount rate is inferred from consumer purchase data and generally incorporates many influences on consumer decision-making (*e.g.*, rates of return, uncertainty, and transaction costs). The implicit discount rate such as those estimated in the cited literature is appropriate for use when modeling a consumer's purchase decision (as in the shipments model). However, in the context of the LCC analysis, many contributing components of the implicit discount rate are not relevant. Factors such as transaction costs are likely to influence a consumer's decision about whether or not to purchase an appliance, but in the LCC, these factors are sunk costs (meaning they are costs that have already been incurred and can no longer be changed within the context of the analysis), which are rationally excluded from calculations valuing future costs and benefits associated with the appliance.[110]

To establish commercial discount rates for the small fraction where businesses are using residential furnaces, DOE estimated the weighted-average cost of capital using data from Damodaran Online.[111] The weighted-average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing. DOE estimated the cost of equity using the capital asset pricing model, which assumes that the cost of equity for a particular company is proportional to the systematic risk faced by that company.

See chapter 8 of the SNOPR TSD for further details on the development of consumer discount rates.

8. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (*i.e.*, market shares) of product efficiencies under the no-new-standards case (*i.e.*, the case without amended or new energy conservation standards).

For the March 2015 NOPR and September 2015 NODA, to estimate the efficiency distribution of NWGFs and MHGFs in 2021, DOE considered incentives and other market forces that have increased the sales of high-efficiency furnaces to estimate base-case efficiency distributions for the considered products. DOE started with data provided by AHRI on historical shipments for each product class. DOE reviewed AHRI data from 1992 to 2009 (which includes both NWGF and MHGF shipments data), detailing the market shares of non-condensing (80-percent AFUE) and condensing (90-percent AFUE and greater) furnaces by region.[112] DOE also compiled data on the national market shares of non-condensing and condensing gas furnaces from 2010 to 2012 from the ENERGY STAR program.[113] With these data, DOE derived historic trends for 30 RECS regions and 9 CBECS Census Divisions, by using the 1992–2003 non-condensing and condensing shipments by State provided by AHRI. For the September 2015 NODA, DOE extended its historical data to be include shipments data for non-condensing and condensing shipments data provide by AHRI for 2010–2014.[114]

To project trends from 2011 to 2021 for the March 2015 NOPR, DOE only used the trends from 1993 to 2004 because from 2005 to 2011, there was a sharp increase in the share of condensing furnaces primarily due to Federal tax credits, which was followed by a sharp decrease in 2012. DOE determined that excluding these years provides a more reasonable projection. For the September 2015 NODA, DOE used the data from 2012 to 2014 to project the trends from 2014 to 2021, which excludes the Federal tax incentive years. The maximum share of condensing shipments for each region is assumed to be 95 percent. In other words, at least five percent of NWGF and MHGF furnace shipments will be non-condensing. The condensing market share for MHGFs was estimated to be half the fraction estimated for NWGFs.

DOE used data on the distribution of models in AHRI's Directory of Certified

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[108] Ruderman, Henry, Mark D. Levine and James E. McMahon (1987), "The Behavior of the Market for Energy Efficiency in Residential Appliances Including Heating and Cooling Equipment," *The Energy Journal,* 8(1): 101–124 (Available at: *www.jstor.org/stable/pdf/41322248.pdf?_=1461360117831*).

[109] Hausman, J.A. (1979), Individual Discount Rates and the Purchase and Utilization of Energy-Using Durables, *The Bell Journal of Economics,* 10(1), 33–54 (Available at: *www.jstor.org/stable/3003318?seq=1#page_scan_tab_contents*).

[110] For example, since the LCC analysis starts from the moment of installation, transaction costs related to researching furnace models have no bearing on the future stream of energy cost savings, and ought not to be incorporated into the discount rate.

[111] Damodaran Online, *Data Page: Costs of Capital by Industry Sector* (2016) (Available at: *http://pages.stern.nyu.edu/~adamodar/*) (Last accessed April, 2016).

[112] The market share of furnaces with AFUE between 80 and 90 percent is well below 1 percent due to the very high installed cost of 81-percent AFUE furnaces, compared with condensing designs, and concerns about safety of operation. The data prior to 1992 were not disaggregated by region.

[113] ENERGY STAR Unit Shipment Data (2012) (Available at: *https://www.energystar.gov/index.cfm?c=partners.unit_shipment_data*).

[114] For the March 2015 NOPR, the AHRI shipments data were not available, and DOE instead relied on shipments data from the ENERGY STAR program to derive its estimates. Based on the AHRI shipments data, DOE's estimate of the condensing furnace market share in 2021 increased from 47 percent in the March 2015 NOPR to 53 percent in the September 2015 NODA.

Product Performance[115] to disaggregate the condensing-level shipments among condensing efficiency levels. Based on stakeholder input, DOE assumed that for furnace replacements, the fraction of 95-percent AFUE and above shipments in the replacement market would be double the fraction in the new construction market. DOE also assumed that the fraction of 95-percent AFUE and above shipments would be higher in the North compared to the South, because the ENERGY STAR level in the North is 95-percent AFUE compared to 90-percent AFUE in the South. The resulting distributions by 30 RECS regions and 9 CBECS Census Divisions divided by replacement and new construction in 2021 was then used to assign the AFUE of each sampled household or building in the no-new-standards case.

Commenting on the NOPR, a number of parties stated that based on new AHRI shipments data, the projected shipments of condensing furnaces in the absence of any revised standard is significantly underestimated. (AHRI, No. 0159 at pp. 67–68; AGA, No. 0118 at p. 20; AGL Resources, No. 0112 at p. 5; Vectren, No. 0111 at p. 4; Ingersoll Rand, No. 0156 at p. 67; Laclede, No. 0141 at p. 32)

The September 2015 NODA analysis incorporated the new AHRI shipments data.[116] The update resulted in an increase in the fraction of consumers already purchasing a condensing furnaces in the no-new-standards case.

Several stakeholders commented on the methodology DOE used to assign efficiencies to sample households in the no-new-standards case.

AHRI stated that the use of a randomized Monte Carlo analysis that does not account for consumer preferences based on climate, income levels, and physical constraints of existing buildings, does not analyze the real-world market for these products. (AHRI, No. 0159 at p. 13) AHRI suggested that DOE should assign furnace efficiency by ranking households based on the benefit from purchasing a condensing furnace as shown by the LCC savings calculation. (AHRI, No. 0159 at pp. 30–31) AHRI stated that relying on the current LCC model is inappropriate because it uses a random assignment of furnace choice to model a non-random environment. (AHRI, No. 0159 at p. 35)

AGA, Vectren, SoCalGas, Rheem, and the GTI report submitted by SoCalGas similarly criticized DOE's LCC model for randomly assigning furnace efficiency in the absence of standards without any regard to consumer costs and benefits. (AGA, No. 0118 at p. 4; Vectren, No. 0111 at p. 3; SoCalGas, No. 0132–2 at p. 5; SoCalGas, No. 0132–7 at p. v, 10; Rheem, No. 0142 at p. 4; SoCalGas, No. 0132–7 at p. 10; SoCalGas, No. 0177–1 at p. 2) AGA, Vectren, and the GTI report submitted by SoCalGas stated that the random assignment methodology misallocates the fraction of consumers who use economic criteria for their decisions, resulting in higher LCC savings compared to use of rational economic decision making criteria. (AGA, No. 0036 at pp. 3–4; AGA, No. 0040–2 at p. 3; Vectren, No. 0111 at pp. 3–4; SoCalGas, No. 0132–7 at p. 10) Lennox and the GTI report submitted by AGA and APGA stated that the September 2015 NODA LCC model did not address the random no-new-standards case furnace efficiency assignment methodology used in the March 2015 NOPR. (AGA, No. 0175–3 at p. 11; APGA, No. 0180 (attachment) at p. 11; Lennox, No. 0201 at p. 2)

ACEEE and the Efficiency Advocates stated that site-specific economics should enter into the determination of the base-case furnace efficiency, but economics is only one of the factors influencing the choice of furnace. ACEEE stated that only using economics to assign efficiency in the no-new-standards case ignores consumers who upgrade for environmental reasons despite poor economics or because of utility incentives. ACEEE recommended including site-specific economics as well as non-economic decision making criteria in the Monte Carlo simulation. (ACEEE, No. 0113 at pp. 5–6; Efficiency Advocates, No. 0196 at p. 3)

NRDC stated that the GTI Report on the March 2015 NOPR appears to suggest that DOE should have assumed a greater level of optimal economic decision making by customers. However, NRDC stated that the real world data and literature on which DOE based the NOPR shows that many purchasers do not make the most economic decision because of market barriers like split incentives and bounded rationality. NRDC stated that GTI provided no basis on which to assume that future consumers will be different. (NRDC, No. 0134 at p. 1)

The Joint Consumer Commenters stated that a well-designed performance standard that raises the efficiency of gas furnaces can address important market imperfections that are difficult to correct with other policies. (Joint Consumer Commenters, No. 0123 at pp. 25–26)

In response, DOE notes that the assignment of furnace efficiency in the no-new-standards case is not entirely random. Assignment of furnace efficiency is done in two steps, first at the regional level, then the building specific level. Furnace efficiencies are first assigned for the 30 RECS and 9 CBECS regions. The market share of each efficiency level at the regional level is based on historical shipments data and an estimation of trends between 2014 and the compliance year. The historic market shares are influenced by factors that affect the cost-effectiveness of condensing furnaces, including climate, the characteristics of the housing stock, natural gas prices, and the presence of incentives to purchase a condensing furnace.

Furnace efficiency is then allocated to specific RECS households or CBECS buildings located within each of the 30 RECS or 9 CBECS regions. The building-specific assignment is not entirely random either. If a household's existing furnace is estimated to be a condensing gas furnace, the replacement furnace is assumed to be condensing as well. (The assignment of condensing furnace efficiency—92-, 95-, or 98-percent AFUE—was random, adding up to the market share of these types of furnaces for that region.)

DOE acknowledges that furnace efficiency choice is affected by economic factors. However, it is DOE's position that the method of assignment, which is in part random, may simulate actual behavior as well as assigning furnace efficiency based solely on imputed cost-effectiveness. This is because there are a variety of aspects of consumer preference, as well as documented and relevant market failures, which complicate the relevant process of consumer choice.

First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are environmentally conscious.[117] Additionally, there are systematic market failures that are likely to contribute further complexity to the way products are chosen by consumers, as explained in the following paragraphs.

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[115] Air Conditioning, Heating, and Refrigeration Institute, Directory of Certified Performance: Furnaces (2013), (Available at: *www.ahridirectory.org/*).

[116] For the March 2015 NOPR, the AHRI shipments data were not available, and DOE instead relied on shipments data from the ENERGY STAR program to derive its estimates. Based on the AHRI shipments data, DOE's estimate of the condensing furnace market share in 2021 increased from 47 percent in the March 2015 NOPR to 53 percent in the September 2015 NODA.

[117] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): "Factors influencing willingness-to pay for the ENERGY STAR® label," *Energy Policy, 39*(3), 1450–1458.

The first of these market failures—the split incentive, or principal-agent, problem—is likely to affect furnaces even more than many other types of appliances. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split incentive problems in the case of rental properties where the landlord makes the choice of furnace to install, but the renter is responsible for paying energy bills. In addition, given that the type of furnace that can be installed in a home is often dependent on structural and design decisions made when the building was constructed, builders end up influencing the type of furnace used in many homes. Finally, contractors install a large share of furnaces in replacement situations, and they can exert a high degree of influence over the type of furnace purchased.

In addition to the split-incentive problem, there are other market failures that are likely to affect the choice of furnace energy efficiency level made by consumers. Davis and Metcalf[118] conducted an experiment demonstrating that the nature of the information available to consumers from the EnergyGuide labels posted on air conditioning equipment results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings indicate that households are likely to make decisions about the efficiency of the climate control equipment of their homes that do not result in the highest net present value for their specific usage pattern (*i.e.*, their decision is based on imperfect information, and therefore is not necessarily optimal).

In part because of the way information is presented, and in part because of the way people process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage, which can affect consumer choices. Attari, Krantz, and Weber[119] show that consumers tend to underestimate the energy use of large energy-intensive appliances, but overestimate the energy use of small appliances. This means that it is likely consumers systematically underestimate the energy use associated with furnaces, resulting in less cost-effective furnace purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde[120] indicates that there is a significant subset of consumers that appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

DOE recognizes that its approach to allocating the efficiency level of a new gas furnace across RECS households within States may not fully reflect actual consumer behavior. However, it is far from clear that allocating the efficiency of furnaces based solely on estimated cost-effectiveness is likely to be any more accurate than the method currently used by DOE. An attempt to more explicitly model consumer choices across furnace efficiency would have to take into account the non-monetary preferences and market failures outlined above, in addition to the economic tradeoffs. At the present time, DOE does not have a method to include site-specific economics as well as non-economic decision making criteria in the Monte Carlo simulation, as suggested by ACEEE. However, this is an issue that DOE intends to investigate, and it welcomes suggestions as to how it might incorporate economic and other relevant factors in its assignment of furnace efficiency in its analyses.

The estimated market shares for the no-new-standards case for NWGFs and MHGFs in 2022 are shown in Table IV.16 and Table IV.17. See chapter 8 of the SNOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.16—AFUE DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FOR NON-WEATHERIZED GAS FURNACES

Efficiency, AFUE	2022 Market share in percent				
	National	North, repl	North, new	South, repl	South, new
80	46.5	25.6	30.2	70.0	64.5
90	5.9	5.6	10.0	4.6	6.5
92	21.2	18.4	33.5	18.4	24.4
95	25.4	48.7	25.7	6.6	4.4
98	0.9	1.7	0.7	0.4	0.2

"Repl" means "replacement."

TABLE IV.17—AFUE DISTRIBUTION IN THE NO-NEW-STANDARDS CASE FOR MOBILE HOME GAS FURNACES

Efficiency, AFUE	2022 Market share in percent				
	National	North, repl	North, new	South, repl	South, new
80	71.4	62.8	60.9	85.9	87.4
92	13.4	6.6	23.3	10.5	11.3
95	15.0	30.2	15.6	3.6	1.3
97	0.2	0.4	0.2	0.0	0.0

"Repl" means "replacement."

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[118] Davis, L.W., and G.E. Metcalf (2014): "Does better information lead to better choices? Evidence from energy-efficiency labels," National Bureau of Economic Research Working Paper No. 20720.

[119] Attari, S.Z., M.L. DeKay, C.I. Davidson, and W. Bruine de Bruin (2010): "Public perceptions of energy consumption and savings." *Proceedings of the National Academy of Sciences* 107(37), 16054–16059.

[120] Houde, S. (2014): "How Consumers Respond to Environmental Certification and the Value of Energy Information," National Bureau of Economic Research Working Paper No. 20019.

DOE also estimated no-new-standards case efficiency distributions for furnace standby mode and off mode power. As shown in Table IV.18, DOE estimated that 61 percent of the affected market would be at the baseline level in 2022, according to data from 18 furnace models from a field study conducted in Wisconsin[121] and data from DOE laboratory tests (see appendix 8I of the SNOPR TSD). In addition, for MHGFs, DOE assigned all PSC furnace fan motor models to the max-tech efficiency level. DOE received no comments about these fractions or assumptions and, therefore, for the SNOPR, kept the same values as used in the March 2015 NOPR and the September 2015 NODA.

TABLE IV.18—STANDBY MODE AND OFF MODE BASE-CASE EFFICIENCY DISTRIBUTION IN 2022 FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

Efficiency level	Standby/off mode (watts)	NWGF market share in percent	MHGF market share in percent
Baseline	11.0	61	5
1	9.5	0	0
2	9.2	17	1
3	8.5	22	94

9. Accounting for Product Switching Under Potential Standards

DOE considered the potential for a standard level to impact the choice between types of heating products, both for new construction and the replacement of existing products. Because home builders are sensitive to the cost of heating equipment, a standard level that significantly increases purchase price may induce some builders to switch to a different heating product than they would have otherwise installed (*i.e.*, in the no-new-standards case). Such an amended standard level may also induce some home owners to replace their existing furnace at the end of its useful life with a different type of heating product.

Some stakeholders questioned the appropriateness of incorporating a product switching model in the LCC analysis. Ingersoll Rand, Prime Energy Partners, APPA, and EEI stated that the LCC calculation in the March 2015 NOPR goes beyond that performed by the Department in previous rulemakings by including the first cost and operating costs of products purchased in lieu of the covered classes. Ingersoll Rand, Prime Energy Partners, and CGS believe that the LCC calculation in the March 2015 NOPR is inconsistent with the requirement in section 325(o)(2)(B)(i)(II) of EPCA that DOE should consider "the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard." Prime Energy Partners stated that DOE's approach would bias the average LCCs and PBPs favorably toward the analyzed standard level by replacing the costs of covered products with lower-cost alternatives. Prime Energy Partners stated that DOE should remove the cost of electric heating products from the LCC and PBP analysis. (Ingersoll Rand, No. 0156 at pp. 8–9; Ingersoll Rand, No. 0182 at p. 2; Prime Energy Partners, No. 0143 at pp. 2–3; APPA, No. 0149 at pp. 2–3; EEI, No. 0160 at p. 103; CGS, No. 0098 at pp. 3–4)

According to DOE's reading, the language in section 325(o)(2)(B)(i)(II) does not specify what the savings in operating costs and increase in price of a standards-compliant product should be measured against. DOE reasons that the most compelling reference point is the product that a consumer would purchase in the absence of amended standards. In most cases, this product would be of the same type as a standards-compliant product, though possibly with different efficiency. In the case of NWGFs, however, switching to alternative heating products is a realistic possibility. Accounting for potential switching provides a more realistic characterization of the no-new-standards case and is not inconsistent with the requirement in section 325(o)(2)(B)(i)(II) of EPCA.

a. Consumer Choice Model

For the March 2015 NOPR, DOE developed a consumer choice model to estimate the response of builders and home owners to potential amended AFUE standards for NWGFs. The model considers three options available to each sample household, which are to purchase and install: (1) A NWGF that meets a particular standard level, (2) a heat pump, or (3) an electric furnace. In addition, for situations in which installation of a condensing furnace would leave an "orphaned" gas water heater requiring costly re-venting, the model allows for the option to purchase an electric water heater as an alternative. For option 2, purchase a heat pump, DOE took into consideration the age of the existing central air conditioner, if one exists, because if the air conditioner is not very old, it is unlikely that the consumer would opt to install a heat pump, which also provides cooling. 80 FR 13120, 13152 (March 12, 2015).

The consumer choice model uses the installed cost of each option, as estimated for each sample household, and the operating costs, taking into account the space heating load and the water heating load for each household and the energy prices it will pay over the lifetime of the available product options.[122] DOE accounted for any additional costs to accommodate a new product. DOE also accounted for the cooling load of each relevant household that might switch from a NWGF and CAC to a heat pump. The GTI report submitted by SoCalGas, PGW, and Laclede stated that fuel switching from gas to electricity is expected to occur in water heating systems if a gas-fired water heater is orphaned. (SoCalGas, No. 0132–7 at p. 2; PGW, No. 0003–2 at p. 3; Laclede, No. 0141 at p. 23) As noted previously, DOE accounted for potential switching from gas-fired water heaters to electric water heaters if the existing water heater is orphaned.

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[121] Scott Pigg, Electricity Use by New Furnaces: A Wisconsin Field Study, Energy Center of Wisconsin (2003) (*Available at: www.ecw.org/publications/electricity-use-new-furnaces-wisconsin-field-study).*

[122] Electric furnaces are estimated to have the same lifetime as NWGFs (21.5 years), but heat pumps have an estimated average lifetime of 19 years, which is 2.5 years less than the estimated average lifetime of NWGFs. To ensure comparable accounting, DOE annualized the installed cost of a second heat pump and multiplied the annualized cost by the difference in lifetime between the heat pump and a NWGF in a particular switching situation.

Other stakeholders pointed out limitations to the opportunity for fuel switching due to local codes and regulations. For example, PG&E commented that fuel switching is unlikely in California, given the requirements of the State's building energy efficiency standards. (PG&E, No. 0153 at p. 3) Von Harz stated that Iowa's HVAC System Adjusted and Verified Efficiency program, despite requiring high-efficiency furnaces, did not experience significant levels of fuel switching. (von Harz, No. 0080 at p. 1) Southern Company stated that the estimated level of switching to electric furnaces is unreasonably high, even in the South. Southern Company stated that contrary to DOE's results, it would expect much less switching to electric furnaces over heat pumps in the South and minimal switching to electric furnaces over heat pumps in the North. (Southern Company, No. 0044 at pp. 290–291) In response, DOE recognizes that in some areas switching to electric heating, and electric furnaces in particular, may be minimal. The SNOPR analysis projects only a small amount of switching to electric furnaces (1.1 percent of all NWGF consumers) for the standards proposed in this SNOPR.

As noted previously, the consumer choice model considered the total installed costs associated with the different product options. For the March 2015 NOPR and September 2015 NODA, DOE used efficiencies and consumer prices for heat pumps and CACs that meet the energy conservation standards that took effect on January 1, 2015 (10 CFR 430.32(c)(3)). For electric furnaces, DOE used an efficiency of 98-percent and a consumer price based on 2013 RS Means. For water heaters, it used efficiency and consumer prices for models that meet the standards that took effect on April 16, 2015. (10 CFR 430.32(d)) For situations where a household with a NWGF might switch to an electric space heating appliance, DOE determined the total installed cost of the electric heating options, including a separate circuit up to 100 amps that would need to be installed to power the electric resistance heater within an electric furnace or heat pump, as well as a cost for upgrading the electrical service panel for a fraction of households. For all installations, DOE used regional labor rates from RS Means 2015 data.[123]

Some stakeholders commented on the product prices used in the March 2015 NOPR for alternative space heating products. ASAP stated that it is unclear whether DOE accounted for the impact of new efficiency standards that took effect in 2015 on heat pump prices. ASAP further argued that heat pump prices will be affected by the next revision to the DOE heat pump standard, which could take effect as soon as 2021, and also by refrigerant phase outs mandated by EPA. (ASAP, No. 0154–1 at p. 4) APPA and EEI stated that the analysis should account for increases in heat pump efficiency standards in 2006 and 2015. (APPA, No. 0149 at pp. 2–3; EEI, No. 0179 at pp. 4–5) EEI stated that it is very likely that new energy efficiency standards for residential heat pumps will be effective in 2021 at the latest. (EEI, No. 0160, pp. 10–11; EEI, No. 0179 at p. 5) EEI stated that the analysis does not take into account the new water heater standards that took effect in 2015 and the associated cost increases of heat pump and condensing water heaters above 55 gallons. (EEI, No. 0160, pp. 11–12)

For the SNOPR, DOE used updated CAC and heat pump prices from the current rulemaking for CACs and heat pumps.[124] These prices account for refrigerant phase outs mandated by EPA. DOE estimated the price of electric furnaces in the engineering analysis. DOE used the same data for water heaters as for the March 2015 NOPR and the September 2015 NODA, which accounted for the standards that took effect in 2015.

b. Product Switching Decision Criteria

The decision criteria in the model were based on proprietary data from Decision Analysts,[125] which identified for a representative sample of consumers their willingness to purchase more-efficient space-conditioning systems (non-proprietary data of a similar nature were not available). Each of the four surveys that DOE used, which span the period 2006 to 2013, involved approximately 30,000 homeowners. The surveys asked respondents the maximum price they would be willing to pay for a product that was 25 percent more efficient than their existing product, which DOE assumed is equivalent to a 25-percent decrease in annual energy costs. DOE also used Decision Analyst data for consumer choice model in the June 27, 2011 direct final rule for residential central air conditioners and residential furnaces. 76 FR 37408. From these data and RECS billing data, DOE deduced that consumers on average would require a payback period of 3.5 years or less for a more-expensive but more-efficient product.

The consumer choice model calculates the PBP between the higher-efficiency NWGF in each standards case compared to the electric heating options using the total installed cost and first-year operating cost as estimated for each sample household or building. For switching to occur, the total installed cost of the electric option must be less than the NWGF standards case option. The model assumes that a consumer will switch to an electric heating option if the PBP of the condensing NWGF relative to the electric heating option is greater than 3.5 years or the PBP is negative. In the case of switching to an electric heating option, the model selects the most economically beneficial case.

Several stakeholders commented on the criteria used to determine whether a household would switch space heating products. AGA stated that the product switching methodology assumes switching will not take place in cases where the payback period is less than 3.5 years; however, in the LCC model, if the payback for the specified efficiency level is less than 3.5 years, switching does take place if switching options with paybacks over 3.5 years are present. (AGA, No. 0040–2 at p. 4) To clarify, DOE notes that if the PBP of a specific condensing NWGF efficiency level relative to a specific electric heating option is less than 3.5 years, switching does not take place.

AGA and NPGA stated that it is unrealistic to use the same criteria for every consumer to determine fuel switching. (AGA, No. 0118 at p. 13; NPGA, No. 0130 at p. 4) NPGA stated that the factors considered by consumers are multiple and varying according to the consumer's rationale, personal finances, home construction, region, *etc.* (NPGA, No. 0130 at p. 4) DOE acknowledges that different consumers are likely to use different criteria when considering fuel switching, but the survey used by DOE does not provide sufficient information to derive a distribution of required payback periods that is transferable to DOE's methodology. Commenters did not provide any additional data on this point, nor did they suggest a more suitable source. As DOE is not aware of any better data source, it maintained its existing approach for this SNOPR.

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[123] RS Means Company, Inc., *RS Means Residential Cost Data 2015* (2014).

[124] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy, *Residential Central Air Conditioners and Heat Pumps* (Available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=48&action=viewlive*) (Last accessed May 2, 2016).

[125] Decision Analysts, 2006, 2008, 2010, and 2013 American Home Comfort Studies (Available at *www.decisionanalyst.com/Syndicated/HomeComfort.dai*).

EEI, ACEEE, ASAP, and the Efficiency Advocates stated that DOE overestimated the amount of fuel switching likely to occur as a result of increased furnace efficiency standards. ACEEE stated that many decision makers will not make an investment at the 3.5-year payback threshold. Furthermore, ACEEE, ASAP, and Rheem would expect consumers, particularly in the North, to be reluctant to switch to electricity, which has a reputation for high bills, less reliability, less comfort, and, in some areas, greater risk of outages. (EEI, No. 0160 at p. 3; EEI, No. 0050 at pp. 56–59; ACEEE, No. 0113 at pp. 2–3; ASAP, No. 0154–1 at pp. 3–4; Rheem, No. 0142 at p. 12; EEI, No. 0179 at p. 4; Efficiency Advocates, No. 0196 at p. 3) ASAP stated that the changes required to switch to an electric space heating appliance are complex, and consumers may face considerable cost and uncertainty about the impacts of changing gas and electric utility services. ASAP stated that the consumer survey data used to determine the switching criterion do not directly address the consumer choice to switch heating fuels, as the decision to buy a more expensive but more efficient product is very different than the decision to switch from one heating fuel to another. (ASAP, No. 0154–1 at pp. 3–4)

DOE acknowledges that the consumer survey data it used to determine the switching criterion do not directly address the consumer choice to switch heating fuels, but in the absence of any data directly associated with fuel switching, DOE believes that the payback criterion is broadly reflective of the potential consumer response. In addition to the primary estimate, DOE conducted sensitivity analyses using higher and lower levels of switching. Whereas the primary estimate uses a consumer decision metric involving expectation of a payback period of 3.5 years or less for a more-expensive but more-efficient product, the sensitivity analyses use payback periods that are one year higher or lower than 3.5 years (*i.e.,* 2.5 years and 4.5 years).

ASAP stated that no fuel switching is a more realistic assumption, but at a minimum, DOE should use the low-switching scenario described in the switching appendix, which is based on what ASAP stated is a slightly more realistic payback threshold. (ASAP, No. 0154–1 at pp. 3–4) ACEEE also recommended using the low-switching scenario. (ACEEE, No. 0113 at pp. 2–3) Given the concerns about switching raised by many stakeholders, DOE is reluctant to rely on the low-switching scenario for its primary estimate.

See appendix 8J of the SNOPR for more details on the decision criteria used in the product switching model.

c. Summary of Product Switching Model

The key parameters of the product switching model includes product switching options, payback criteria, installation cost, and operating costs. DOE analyzed product switching scenarios that represent the most common combinations of space conditioning and water heating products that could be used in the case of a condensing NWGF energy efficiency standard. The consumer choice model calculates the PBP between the higher-efficiency NWGF in each standards case compared to the electric heating options using the total installed cost and first-year operating cost as estimated for each sample household or building. For switching to occur, the total installed cost of the electric option must be less than the NWGF standards case option.

The product switching model is based on the payback of a higher efficiency furnace in comparison to the heat pump and electric furnace alternatives. Based on data from consumer surveys, DOE applied payback criteria of 3.5 years for all consumers. In order to characterize the uncertainty associated with the payback criteria value, DOE conducted sensitivity analyses using higher and lower payback criteria. Whereas the primary estimate uses a consumer decision metric involving expectation of a payback period of 3.5 years or less for a more-expensive but more-efficient product, the sensitivity analyses use payback periods that are one year higher or lower than 3.5 years (*i.e.,* 2.5 years and 4.5 years). The results of the sensitivity analyses on the estimated extent of product switching and on the LCC and PBP results are given in section V.B.1.a, and the results on the national energy savings and NPV are given in section V.B.3.

d. Switching Resulting from Standards for Mobile Home Gas Furnaces

For the March 2015 NOPR, DOE concluded that fuel switching would be unlikely for MHGFs. 80 FR 13120, 13164 (March 12, 2015). Nortek and Mortex responded that the higher total installed cost of a condensing MHGF would likely force consumers to switch to a less-efficient electric furnace, resulting in higher monthly utility bills. (Nortek, No. 0137 at p. 4; Mortex, No. 0157 at p. 3) AHRI also stated that DOE should consider product switching from MHGFs to other space heating products. (AHRI, No. 0050 at pp. 67–68) JCI commented that the mobile home market is particularly price sensitive, so the higher initial cost of a condensing furnace will drive many builders from natural gas to electric heating products. (JCI, No. 0148 at pp. 6–7)

For replacement MHGFs, DOE has tentatively concluded that the installation costs of switching to electric heating (which include increasing the electrical requirements) and high electricity prices in some regions would tend to discourage owners of MHGFs from switching. For MHGFs in the new construction market, the estimated average incremental cost of a 92-percent AFUE condensing furnace is $150. According to the recently issued Notice of Proposed Rulemaking[126] for manufactured housing, DOE estimates that a baseline single section manufactured home costs $45,000 and a baseline double section manufactured home costs $82,000. Based on this, DOE has tentatively concluded that a cost of this magnitude would be unlikely to cause producers of manufactured homes to make furnace-related design changes.

10. Payback Period

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted above in section III.E.2, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the amended or new standards would be required.

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[126] See: *http://energy.gov/sites/prod/files/2016/05/f31/Manufactured%20Housing%20NOPR_1.pdf.*

G. Shipments Analysis

1. Shipments Model and Inputs

DOE uses forecasts of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[127] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

DOE developed shipment projections based on historical data and an analysis of key market drivers for each product. DOE estimated gas furnace shipments by projecting shipments in three market segments: (1) Replacements; (2) new housing; and (3) new owners in buildings that did not previously have a NWGF. DOE also considered whether standards that require more-efficient furnaces would have an impact on furnace shipments.

For the March 2015 NOPR, DOE assembled historic shipments data for NWGFs and MHGFs from Appliance Magazine,[128] AHRI,[129] and Census Mobile Home.[130] For the September 2015 NODA, DOE added the 2014 shipments from AHRI.[131]

The GTI report submitted by SoCalGas stated that DOE's condensing furnace shipment forecasts are based on assumed current market conditions that differ from AHRI condensing furnace shipment data. (SoCalGas, No. 0132–7 at p. v) DOE disagrees with this comment, because DOE did use the latest-available shipments data from AHRI in its analysis. For the September 2015 NODA and this SNOPR, DOE used the 2010–2014 shipments data provided by AHRI, with disaggregated non-condensing and condensing shipments.[132] For the SNOPR, DOE used updated total 2015 shipments data from AHRI,[133] but disaggregated data by non-condensing and condensing shipments for 2015 was not available for the SNOPR analysis.

For the March 2015 NOPR and September 2015 NODA, DOE disaggregated MHGF shipments from the gas furnace total by using a combination of data from the U.S. Census[134] and American Housing Survey (AHS).[135] Disaggregated condensing and non-condensing gas furnace shipments by region from 1992 to 2009 were used to estimate shipments by region before 1992 and after 2009. For the SNOPR, DOE updated to the latest U.S. Census[136] and AHS data.[137]

Mortex stated that the number of MHGFs manufactured in 2014 was estimated to be about 54,000, and about two-thirds were sold to the replacement market. Mortex stated that MHGF sales have not been growing. (Mortex, No. 0157 at p. 3) For the SNOPR, DOE revised its data for current MHGF shipments to align with the estimate from Mortex.

To project furnace replacement shipments, DOE developed retirement functions from the furnace lifetime estimates and applied them to the existing products in the housing stock, which are tracked by vintage.

To project shipments to the new housing market, DOE utilized a forecast of new housing construction and historic saturation rates of furnace product types in new housing. DOE used *AEO 2014* for forecasts of new housing for the March 2015 NOPR.[138] DOE estimated future furnace saturation rates in new housing based on a weighted-average of U.S. Census Bureau's Characteristics of New Housing[139] values from 1990 through 2013. For the September 2015 NODA and this SNOPR, DOE used *AEO 2015* for forecasts of new housing from the NOPR[140] and added the U.S. Census Bureau's Characteristics of New Housing[141] values from 2014 to 2015.

For the March 2015 NOPR and the September 2015 NODA, to project shipments to new owners of NWGFs, DOE used the shipments model together with data in the American Home Comfort Survey[142] to estimate that the annual total amounts to ten percent of NWGF replacement shipments in 2021.

AHRI stated that the population of new owners is by definition an ever decreasing base and should not have constant shipments. (AHRI, No. 0050 at pp. 54–55) In response, DOE notes that new houses are continually being built, some without NWGFs. Some of these homeowners could potentially install a NWGF at a later point, so the new owner market may not necessarily decrease.

For shipments of NWGFs to commercial applications, DOE developed no-new-standards case shipments forecasts for each of the four Census regions that, in turn, were aggregated to produce regional and national forecasts. DOE estimated that the fraction of residential NWGFs shipped to the commercial sector is approximately three percent.[143]

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[127] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[128] *Appliance Historical Statistical Review: 1954–2012,* Appliance Magazine (2014).

[129] Air-Conditioning, Heating, & Refrigeration Institute, *Furnace Historical Shipments Data.* (1994–2013) (*Available at: http://www.ahrinet.org/site/497/Resources/Statistics/Historical-Data/Furnaces-Historical-Data*) (Last accessed October 15, 2014).

[130] U.S. Census. Manufactured Homes Survey: Historical Data. (Available at: *http://www.census.gov/construction/mhs/mhsindex.html* (Last accessed April 26, 2016.).

[131] Air-Conditioning, Heating, and Refrigeration Institute, *Non-Condensing and Condensing Regional Gas Furnace Shipments for 2010–2014* (2015), Air-Conditioning, Heating, and Refrigeration Institute: Arlington, VA. (Available at: *www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0052*) (Last accessed January 6, 2016.).

[132] Air-Conditioning, Heating, and Refrigeration Institute, *Non-Condensing and Condensing Regional Gas Furnace Shipments for 2010–2014* (2015), Air-Conditioning, Heating, and Refrigeration Institute: Arlington, VA. (Available at: *www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0052*) (Last accessed January 6, 2016).

[133] Air-Conditioning, Heating, & Refrigeration Institute, *Furnace Historical Shipments Data.* (1996–2015) (*Available at: http://www.ahrinet.org/site/497/Resources/Statistics/Historical-Data/Furnaces-Historical-Data*) (Last accessed April 26, 2016).

[134] U.S. Census Bureau, *Manufactured Homes Survey* (June 1, 2013) (Available at: *https://www.census.gov/construction/mhs/mhsindex.html*) (Last accessed July 9, 2015).

[135] U.S. Census Bureau—Housing and Household Economic Statistics Division, *2011 American Housing Survey* (2011) (Available: *www.census.gov/programs-surveys/ahs/data.2011.html*) (Last accessed June 30, 2015).

[136] U.S. Census Bureau, *Manufactured Homes Survey* (Available at: *https://www.census.gov/construction/mhs/mhsindex.html*) (Last accessed August 26 2015).

[137] U.S. Census Bureau—Housing and Household Economic Statistics Division, *2013 American Housing Survey* (2013) (Available at: *www.census.gov/programs-surveys/ahs/data.2013.html*) (Last accessed June 30, 2015).

[138] U.S. Department of Energy, Energy Information Administration, Annual Energy Outlook 2014, Table 20 (Available at: *www.eia.gov/forecasts/aeo/data.cfm?filter=macroeconomic#macroeconomic*) (Last accessed July 29, 2014).

[139] U.S. Census Bureau, Characteristics of New Housing (Available at: *www.census.gov/const/www/charindex.html*) (*Last accessed Aug. 19, 2014*).

[140] U.S. Department of Energy, Energy Information Administration, Annual Energy Outlook 2015, Table 20 (Available at: *www.eia.gov/forecasts/aeo/data.cfm?filter=macroeconomic#macroeconomic*) (Last accessed July 29, 2015).

[141] U.S. Census Bureau, Characteristics of New Housing (Available at: *www.census.gov/const/www/charindex.html*) (*Last accessed April 26, 2016*).

[142] Decision Analysts, 2008 American Home Comfort Study: Online Database Tool (Available at: *www.decisionanalyst.com/Syndicated/HomeComfort.dai*) (Last accessed April 26, 2016).

Mortex questioned if DOE's forecast of declining MHGF shipments means that consumers are not replacing their MHGFs, given that there are a lot of older MHGFs, and DOE assumes that there is no switching to other products. (Mortex, No. 0157 at p. 3) As mentioned before, DOE revised its data for current MHGF shipments to align with the estimate from Mortex. These revised shipments show a slight increase. DOE's analysis assumes that some MHGFs are not replaced because the lifetime of a mobile home is often similar to that of a MHGF.

2. Impact of Potential Standards on Shipments

For the March 2015 NOPR, to estimate the impact on NWGF shipments of product switching that may be incentivized by potential standards, DOE applied the consumer choice model described in section IV.F.9. The options available to each sample household or building are to purchase and install: (1) The NWGF that meets a particular standard level, (2) a heat pump, or (3) an electric furnace.[144]

As applied in the LCC and PBP analysis, the model considers product prices in the compliance year and energy prices over the lifetime of products installed in that year. The shipments model considers the switching that might occur in each year of the analysis period (2022–2051). To do so, DOE estimated the switching in the final year of the analysis period (2051) and derived trends from 2022 to 2051. First, DOE applied the NWGF product price trend described above to project prices in 2051. DOE used the appropriate energy prices over the lifetime of products installed in each year. Although the inputs vary, the decision criteria, as described in section IV.F.9, were the same in each year. For each considered standard level, the number of NWGFs shipped in each year is equal to the base shipments in the no-new-standards case minus the number of NWGF buyers who switch to either a heat pump or an electric furnace. The shipments model also tracks the number of additional heat pumps and electric furnaces shipped in each year.

AHRI stated that in the shipments analysis, DOE concluded that higher prices for condensing furnaces would not significantly affect shipments, but at the same time, DOE concluded that higher NWGF prices would lead consumers to switch products to avoid the LCC and PBP cost impacts from a higher-efficiency furnace. (AHRI, No. 0159 at p. 22) DOE clarifies that the estimated degree of switching away from NWGFs under each TSL is reflected in a decrease in shipments.

AHRI stated that increasing the installed cost would impact the projected shipments due to price elasticity. (AHRI, No. 0159 at p. 48) Goodman expects that a standard would decrease shipments. (Goodman, No. 0135 at p. 8) For NWGFs, DOE maintains that the response to an increase in installed cost would primarily be in the form of product switching. Therefore, rather than applying a price elasticity parameter to relate increase in installed cost to the demand for furnaces, DOE accounted for the impact of such increase by incorporating product switching in the shipments model. This approach captures not only the decrease in NWGF shipments, but also the increase in shipments (and use) of heat pumps and electric furnaces resulting from switching. For MHGFs, DOE has tentatively concluded that either the impact of price elasticity or product switching in response to amended standards would be minimal, since the installation cost differential is small between non-condensing and condensing MHGFs.

Many stakeholders stated that due to the high cost of condensing furnaces, consumers (particularly low- and moderate-income consumers) may choose to repair existing non-condensing furnaces instead of replacing them with a condensing furnace. (Carrier, No. 0116 at pp. 9, 11; PGW, No. 0003–2 at pp. 5–6; PGW, No. 0122 at p. 3; AGL Resources, No. 0112 at p. 7; Gas Authority, No. 0086 at pp. 4–5; Laclede, No. 0141 at p. 37; Questar Gas, No. 0151 at p. 1; Allied Air, No. 0044 at p. 267; Nayes, No. 0055 at p. 1; AHRI, No. 0159 at pp. 15, 23) DOE notes that replacement of a furnace in the shipments model is generally associated with failure of major components such as the heat exchanger. Because such repair is a large expense, DOE believes that relatively few consumers would choose to undertake such a repair, given concerns that other major repairs may soon follow. In addition, under the currently-proposed standards, many low-income consumers or owners of multi-family homes could use a small furnace and, thus, could install a new non-condensing furnace.

Because measures to limit standby mode and off mode power consumption have a very small impact on the total installed cost and do not impact consumer utility, and thus have a minimal effect on consumer purchase decisions, DOE assumed that NWGF shipments in the no-new-standards case would be unaffected by new standby mode and off mode standards.

For details on DOE's shipments analysis of product and fuel switching, see chapter 9 of the SNOPR TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[145] ("Consumer" in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[146] For the present NIA analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of NWGFs and MHGFs sold from 2022 through 2051.

DOE evaluates the impacts of amended or new standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.*, the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

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[143] The results derived from RECS 2009 and CBECS 2003 show there are 45.6 and 1.2 million residential furnaces in residential and commercial buildings, respectively. DOE assumed that the share of shipments is similar to the share in the stock.

[144] DOE also accounted for situations when installing a condensing furnace could leave an "orphaned" gas water heater that would require expensive re-sizing of the vent system. Rather than incurring this cost, the consumer could choose to purchase an electric water heater along with a new furnace.

[145] The NIA accounts for impacts in the 50 states and U.S. territories.

[146] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.19 summarizes the inputs and methods DOE used for the NIA analysis for the SNOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the SNOPR TSD for further details.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS FOR THE SNOPR

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2022.
Efficiency Trends	No-new-standards case: Based on historical data. Standards cases: Roll-up in the compliance year and then DOE estimated growth in shipment-weighted efficiency in all the standards cases, except max-tech.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit.	Annual values do not change with efficiency level.
Energy Prices	*AEO2015* forecasts (to 2040) and extrapolation through 2051.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on *AEO2015*.
Discount Rate	Three and seven percent.
Present Year	2016.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this notice describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for the considered product classes in the year of anticipated compliance with an amended or new standard (2022). To project the trend in efficiency absent amended standards for NWGFs and MHGFs over the entire 30-year shipments projection period, DOE extrapolated the historical trends in efficiency that were described in section IV.F.8. DOE estimated that the national market share of condensing products would grow from 53 percent in 2022 to 65 percent by 2051 for NWGFs, and from 26 percent to 32 percent for MHGFs. The market shares of the different condensing efficiency levels (*i.e.,* 90-, 92-, 95-, and 98-percent AFUE for NWGF and 92-, 95-, and 97-percent AFUE for MHGF) are maintained in the same proportional relationship as in 2022.

Due to the lack of historical efficiency data for standby mode and off mode power consumption, DOE estimated that the efficiency distribution would remain the same throughout the forecast period.

For the standards cases, DOE used a "roll-up" scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2022). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would "roll up" to meet the new standard level, and the market share of products above the standard would remain unchanged. For the March 2015 NOPR, in the standards case with a 90-percent AFUE national standard, DOE estimated that many consumers will purchase a 92-percent AFUE furnace rather than a 90-percent AFUE furnace because the extra installed cost is minimal, and the market has already moved significantly toward the 92-percent level.

ACEEE and ASAP commented that a "roll up" scenario is overly conservative and stated that DOE should use a "shift" scenario for all TSLs. (A "shift" scenario assumes increases in the market share of products at efficiencies above the standard level following an increase in the standard level.) DOE acknowledges that there could be some increase in the market share of products at efficiencies above the standard level in the compliance year, but DOE has found the roll-up approach to provide a conservative estimate of the potential energy savings in the standards case. As described below, DOE did project increase in the market share of products at efficiencies above the standard level after the compliance year.

ACEEE and ASAP stated that there are many market forces and public policies that will foster market share growth for condensing furnaces exceeding any new standard. (ACEEE, No. 0113 at p. 2; ASAP, No. 0154–1 at pp. 3, 5–6) To develop standards case efficiency trends after 2022, DOE estimated growth in shipment-weighted efficiency in the standards cases, except in the max-tech standards case. The estimated growth accounts for potential changes in ENERGY STAR criteria and the response of manufacturers to minimum standards in the condensing range.

DOE did not have a basis on which to predict a change in efficiency trend for standby mode and off mode power consumption, so DOE assumed that the efficiency distribution would not change after the first year of compliance.

The efficiency trends are further described in chapter 10 of the SNOPR TSD.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each potential standards case (TSL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher-efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted any electricity consumption or savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from the *AEO.* For natural gas and LPG, DOE assumed that site energy consumption is the same as primary energy consumption.

The per-unit annual energy use is adjusted with the building shell improvement index, which results in a decline of 8 percent in the heating load from 2022 to 2051, and the climate index, which results in a decline of 7 percent in the heating load. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Commenting on the energy consumption for each efficiency level in the NIA, AHRI stated that the average energy demand in buildings with condensing NWGFs in the absence of standards is almost certainly higher than the average energy use of the buildings with non-condensing NWGFs absent standards.[147] AHRI stated that using average energy consumption of all buildings for each efficiency level in the NIA substantially overestimates the energy savings. (AHRI, No. 0159 at pp. 64–65) In response, DOE's approach for the modeling of unit energy consumption (UEC) in the no-new-standards case reflects a matching between the UEC for each efficiency level and the subset of homes that are estimated to install furnaces at each AFUE level. See chapter 10 of the SNOPR TSD for details.

In the standards cases, there are fewer shipments of NWGFs or MHGFs compared to the no-new-standards case because of product switching, but there are additional shipments of heat pumps, electric furnaces, and electric water heaters. DOE incorporated the per-unit annual energy use of the heat pumps and electric furnaces that was calculated in the LCC and PBP analysis (based on the specific sample households that switch to these products) into the NIA model.

AHRI stated that the increased cost of a furnace as a result of this rulemaking would mean that the replacement of furnaces with PSC motors by furnaces with higher-efficiency motors would be lower than projected in the furnace fan rulemaking. AHRI argued that DOE must recalculate the projected savings from the furnace fan standards and account for those reduced savings in this rulemaking. (AHRI, No. 0159 at p. 65) DOE does not agree with AHRI's reasoning or its recommendation. DOE acknowledges that the standards proposed for NWGFs in this document may result in slightly lower replacement of furnaces with PSC motors by furnaces with higher efficiency motors than projected in the furnace fan rulemaking. However, the purpose of DOE's analysis is to accurately estimate the impacts of the proposed standards, and not to incorporate any adjustments associated with past rulemakings for a different product (*i.e.,* furnace fans).[148]

DOE incorporated a rebound effect for NWGFs and MHGFs by reducing the site energy savings in each year by 15 percent.

DOE used a multiplicative factor to convert site electricity consumption (at the home or commercial building) into primary energy consumption (the energy required to convert and deliver the site electricity). These conversion factors account for the energy used at power plants to generate electricity and energy losses during transmission and distribution. The factors vary over time due to changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country) projected in *AEO 2015.*[149] The factors that DOE developed are marginal values, which represent the response of the electricity sector to an incremental decrease in consumption associated with potential appliance standards. Because *AEO* projections end in 2040, DOE maintained the 2040 value for years after 2040.

NRDC stated that the source energy factor for electricity from *AEO 2014* does not accurately account for marginal, rather than average, generation source energy. NRDC argued that a marginal factor is much more appropriate measure because fuel switching happens at the margin of electricity generation. (NRDC, No. 0134 at pp. 2, 7–8) For the SNOPR, DOE uses marginal factors to convert site electricity consumption into primary energy consumption.

EEI pointed out that the conversion factor increases slightly from 2035 to 2040 without explanation but shows no improvement from 2040 on. EEI stated that this post-2035 increase does not comport with the expected fuel mix that will be generating electricity after 2030. (EEI, No. 0179 at p. 10) In response, the site-to-primary energy factors that DOE derived based on *AEO 2015* show a relatively flat trend between 2030 and 2040, so it is reasonable to use the 2040 value for years after 2040. DOE interprets EEI's comment as suggesting that expected growth in renewable energy would result in a fuel mix to generate electricity that would affect the site-to-primary energy factors. However, the growing penetration of renewable electricity generation has little effect on the trend in site-to-primary energy factors because EIA uses an average fossil fuel heat to characterize the primary energy associated with renewable generation. DOE has recently issued a Request for Information (RFI)[150] regarding site-to-primary energy factors and may revisit these factors in the future based on responses to the RFI.

AGA, Vectren, and NPGA stated that after correcting for DOE's analytical errors, fuel switching to electricity will increase primary energy consumption because increased electricity demand outweighs the reduced natural gas use. (AGA, No. 0118 at pp. 3, 5–6; Vectren, No. 0111 at p. 2; NPGA, No. 0171 at pp. 2–3) Indiana and Carrier stated that the proposed standard may increase energy usage due to fuel switching by consumers who choose lower-cost, less-efficient space heating products. (Indiana, No. 0094 at p. 1; Carrier, No. 0116 at p. 10) On this point, DOE would first note that switching to electric heating products was significantly higher under the standards proposed in the March 2015 NOPR than it is under the standards proposed in this SNOPR.[151] Even so, these comments lost sight of the overall landscape of energy savings associated with amended standards by focusing solely on the differences in primary energy use between gas and electric home heating products for that small portion of consumers who would engage in fuel switching. Although switching to electric heating products does increase primary energy consumption relative to use of NWGFs, the savings in primary natural gas resulting from the currently-proposed standards far outweigh the increase in energy use due to switching.

In 2011, in response to the recommendations of a committee on

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[147] DOE's understanding of AHRI's reasoning is that homes purchasing a condensing furnace in the no-new-standards case would tend to have a higher heating load because a condensing furnace would tend to be more cost-effective in such cases.

[148] DOE's analysis of potential standards for NWGFs and MHGFs fully accounts for the standards for furnace fans that take effect in 2019.

[149] U.S. Department of Energy, Energy Information Administration, *Annual Energy Outlook 2015* (Available at: *www.eia.gov/forecasts/aeo/data.cfm*) (Last accessed July 29, 2015).

[150] See: *https://www.regulations.gov/#!docketDetail;D=EERE-2016-OT-0010.*

[151] The main reason why the estimated switching is lower under the standards proposed in this SNOPR is because of the creation of a product class for small furnaces for which a non-condensing furnace would meet the standard. In this case, there is less incentive for switching.

"Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial-equilibrium model of the U.S. energy sector[152] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the SNOPR TSD.[153]

NPGA commented that there is no indication that DOE applied FFC analysis to the electric alternatives that are likely to increase as consumers switch fuels due to the retrofit and redesign costs of propane-powered furnaces. (NPGA, No. 0130 at p. 5) In response, DOE did determine the FFC energy use associated with the projected increase in electricity use resulting from fuel switching.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual operating costs (energy costs and repair and maintenance costs); and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period.

As discussed in section IV.F.1, DOE used an experience curve method to project future product price trends. Application of the price index results in a decline of 17 percent in furnace prices from 2022 to 2051. In addition to the default trend described in section IV.F.1, which shows a modest rate of decline, DOE performed price trend sensitivity calculations in the NIA to examine the dependence of the analytical results on different analytical assumptions. The price trend sensitivity analysis considered a trend with a greater rate of decline than the default trend and a trend with constant prices. The derivation of these trends is described in appendix 10C of the SNOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the forecast of annual national-average residential energy price changes in the Reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the SNOPR TSD.

As mentioned previously, in the standards cases, there are fewer shipments of NWGFs or MHGFs than in the base case because of product switching, but there are additional shipments of heat pumps and electric furnaces. For these products, the appropriate annual operating costs and installed costs that were calculated in the LCC and PBP analysis were incorporated into the NIA model.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. DOE estimates the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate.

AHRI stated that the 3-percent and 7-percent discount rates used in the NIA are too low because the 3-percent rate is lower than the consumer rate actually used in the LCC and the 7-percent rate is lower than the rate that DOE should use in the LCC. (AHRI, No. 0159 at p. 64) Regarding this point, DOE notes that the discount rates used in the NIA reflect a national perspective, which is distinct from the consumer perspective used in the LCC analysis. DOE uses 3-percent and 7-percent discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[154] The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

As noted above, in determining national energy savings, DOE is accounting for the rebound effect associated with more-efficient furnaces.[155] Because consumers have foregone a monetary savings in energy expenses, it is reasonable to conclude that the value of the increased utility is equivalent to the monetary value of the energy savings that would have occurred without the rebound effect. Therefore, the economic impacts on consumers with or without the rebound effect, as measured in the NPV, are the same.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. DOE analyzed the impacts of the considered standard levels on two subgroups: (1) Low-income households and (2) senior-only households. The analysis used subsets of the RECS 2009 sample comprised of households that meet the criteria for the two subgroups for both NWGFs and MHGFs. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups.

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[152] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998) (Available at: *www.eia.gov/oiaf/aeo/overview/*).

[153] DOE generally does not include possible indirect impacts of standards on energy use outside of the full-fuel-cycle. Such indirect impacts could include changes in the energy used to manufacture and transport covered products, or in the energy used to process material inputs to covered products. DOE maintains that such indirect impacts fall outside of the EPCA mandate for DOE to to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III))

[154] United States Office of Management and Budget. Circular A–4: Regulatory Analysis (Sept. 17, 2003), section E. (Available at *www.whitehouse.gov/omb/memoranda/m03-21.html*).

[155] As previously discussed in section IV.E.1, the rebound effect provides consumers with increased utility (*e.g.,* a more comfortable indoor environment).

Some stakeholders questioned the discount rates that DOE used for low-income households and senior-only households.

AHRI stated that DOE did not address the higher cost of capital for the subgroups relative to the average residential discount rate. (AHRI, No. 0159 at pp. 13–14) As described in section IV.F.7, DOE developed a distribution of discount rates by income group. The low-income households and senior-only households in the subgroup samples are identified by income, and they are assigned a discount rate from the appropriate income category. The average rate is higher for the low-income subgroup compared to the overall average.

AGA stated that DOE's discount rate underweights low-income consumer reliance on credit cards and other high-interest forms of financing. (AGA, No. 0118 at p. 28) AGL Resources stated that in order to purchase and install furnaces that comply with the standards proposed in the NOPR, many low-income and fixed-income homeowners would borrow money at high interest rates due to sub-par credit, further diminishing any benefits derived from lower utility bills. (AGL Resources, No. 0112 at p. 8) DOE uses a weighted-average cost of capital that is distinct from the financing that may be used to directly purchase a furnace. As discussed in the response to comments in section IV.F.7, DOE maintains that the interest rate associated with the specific source of funds used to purchase a furnace (*i.e.,* the marginal rate) is not the appropriate metric to measure the discount rate as defined for the LCC analysis. See section IV.F.7 for elaboration of DOE's reasoning.

NRDC stated that if a significant fraction of low-income households are renters rather than owners, the NOPR may overestimate consumer costs, as renters have limited and indirect exposure to installed costs, although they are often responsible for paying utility bills. (NRDC, No. 0134 at pp. 2, 8) DOE acknowledges that it assumed that the cost of a product incurred by a landlord is passed on to the tenant who pays the utility bills may overestimate the costs actually incurred by renters. Although economic theory would suggest that landlords do pass on their costs through increased rent, the extent and timing of such pass-through is not well understood, given that rental markets can be either rent controlled or very competitive in terms of rental rates. To the extent that such transfer does not occur, low-income renters would benefit more than is shown by DOE's analysis.

Chapter 11 in the SNOPR TSD describes the consumer subgroup analysis and its results.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to determine the financial impact of amended energy conservation standards on manufacturers of NWGFs and MHGFs and to estimate the potential impacts of such standards on domestic employment, manufacturing capacity, and cumulative regulatory burden for those manufacturers. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA includes analyses of forecasted industry cash flows to calculate the INPV, additional investments in research and development (R&D) and manufacturing capital necessary to comply with amended standards, and the potential impact on domestic manufacturing employment. Additionally, the MIA seeks to qualitatively determine how amended energy conservation standards might affect manufacturers' capacity and competition, as well as how standards contribute to manufacturers' overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are INPV, which is the sum of industry annual cash flows throughout the analysis period discounted using the industry-weighted average cost of capital, and the impact on domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of amended energy conservation standards on the NWGF and MHGF manufacturing industry by comparing changes in INPV and domestic production employment between the no-new-standards case and each of the standard levels. To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative regulatory burden of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the SNOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In the first phase of the MIA, DOE prepared a profile of the NWGF and MHGF manufacturer industry based on the market and technology assessment and publicly available information. This included a top-down cost analysis of NWGF and MHGF manufacturers in order to derive preliminary financial inputs for the GRIM (*e.g.,* selling, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including company SEC 10–K filings,[156] corporate annual reports, the U.S. Census Bureau's Economic Census,[157] and Hoover's reports [158] to conduct this analysis.

In the second phase of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of new energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standards and extending over a 30-year period following the compliance date of the standards. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and changes in sales volumes.

In addition, during the second phase, DOE developed an interview guide to distribute to NWGF and MHGF manufacturers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the potential impacts of amended energy conservation standards on revenue, direct employment, capital assets, industry competitiveness, and manufacturer subgroup impacts.

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[156] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years), available at: *http://www.sec.gov/edgar/searchedgar/companysearch.htm* (last accessed August 1, 2014)l.

[157] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2014), available at: *http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t.*

[158] Hoovers Inc. Company Profiles, Various Companies, available at: *http://www.hoovers.com.*

In the third phase of the MIA, DOE conducted structured, detailed interviews with NWGF and MHGF manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM. DOE also solicited information about manufacturers' views of the industry as a whole and their key concerns regarding this rulemaking.

Additionally, in the third phase, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected by amended energy conservation standards. The small business subgroup is discussed in section VI.B, "Review under the Regulatory Flexibility Act" and in chapter 12 of the SNOPR TSD.

To identify small businesses for this analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. The size standards are codified at 13 CFR part 121. To be categorized as a small business under North American Industry Classification System (NAICS) code 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing," a NWGF and or MHGF manufacturer and its affiliates may employ a maximum of 1,250 employees. The 1,250 employee threshold includes all employees in a business' parent company and any subsidiaries. Based on this classification, DOE identified three NWGF and or MHGF companies that qualify as domestic small businesses. The NWGF and MHGF small manufacturer subgroup is discussed in section VI.B of this document and in chapter 12 of the SNOPR TSD.

2. Government Regulatory Impact Model Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash flows over time due to amended energy conservation standards. These changes in cash flows result in either a higher or lower INPV for the standards cases compared to the no-new-standards case. The GRIM analysis uses a standard annual cash flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. It then models changes in costs, investments, and manufacturer margins that result from new energy conservation standards. The GRIM uses these inputs to calculate a series of annual cash flows beginning with the reference year of the analysis, 2016, and continuing to the terminal year of the analysis, 2051. DOE calculates INPV by summing the stream of annual discounted cash flows throughout the analysis period.

DOE used a real discount rate of 6.4 percent for NWGF and MHGF manufacturers. The discount rate estimate was derived from industry corporate annual reports to the Securities and Exchange Commission (SEC 10-Ks) and then modified according to feedback received during manufacturer interviews. More information on the derivation of the manufacturers' discount rate can be found in chapter 12 of the TSD.

DOE seeks comment on its use of 6.4 percent as a discount rate for NWGF and MHGF manufacturers (see section VII.E).

Many GRIM inputs came from the engineering analysis, the NIA, manufacturer interviews, and other research conducted during the MIA. The major GRIM inputs are described in detail in the following sections.

For consideration of standby mode and off mode regulations, DOE modeled the impacts of the technology options for reducing electricity usage discussed in the engineering analysis (chapter 5 of the TSD). The GRIM analysis incorporates the increases in MPCs and changes in markups into the results from the standby mode and off mode requirements. Due to the small cost of standby mode and off mode components relative to the overall cost of a NWGF or MHGF, DOE assumed that standby mode and off mode standards alone would not significantly impact product shipment numbers. DOE determined that the impacts of the standby and off mode standard are substantially smaller than the impacts of the AFUE standard. Therefore, DOE's analysis focused primarily on impacts of the AFUE standard.

The GRIM results for both the AFUE standards and the standby mode and off mode standards are discussed in section V.B.2. Additional details about the GRIM, discount rate, and other financial parameters can be found in chapter 12 of the SNOPR TSD.

a. Capital and Product Conversion Costs

Amended energy conservation standards could cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be required to comply with each analyzed efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs; and (2) product conversion costs. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards.

To evaluate the level of capital conversion expenditures manufacturers could incur to comply with amended AFUE energy conservation standards, DOE used manufacturer interviews to gather data on the anticipated level of capital investment that would be required at each efficiency level. Based on this manufacturer feedback, DOE developed a market-share weighted average capital expenditure per manufacturer. DOE then scaled the number to estimate total industry capital conversion costs. DOE validated manufacturer comments with estimates of capital expenditure requirements derived from the product teardown analysis and engineering analysis described in chapter 5 of the SNOPR TSD.

DOE assessed the product conversion costs at each considered AFUE efficiency level by integrating data from quantitative and qualitative sources. DOE considered market-share weighted feedback regarding the potential costs at each efficiency level from multiple manufacturers to estimate product conversion costs. Manufacturer data was aggregated to better reflect the industry as a whole and to protect confidential information.

DOE calculated the conversion costs for the standby mode and off mode standards separately from the AFUE conversion costs. DOE anticipated that manufacturers would incur minimal capital conversion costs to comply with standby and off mode standards, as the engineering analysis indicates that all the design options that improve standby and off mode performance are component swaps which would not require new investments in production lines. However, the standby and off mode standards may require product conversion costs related to testing new components and component configurations as well as one-time updates to marketing materials. DOE estimated these product conversion costs based on the engineering analysis and feedback collected during manufacturer interviews. In general, DOE assumed that all conversion-related investments occur between the year of publication of the final rule and the compliance year. The conversion cost estimates used in the GRIM can be found in section V.B.2.

DOE seeks comment on its methodology used to calculate capital and product conversion costs (see section VII.E).

For additional information on how DOE estimated product and capital conversion costs, see chapter 12 of the SNOPR TSD.

b. Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components, which are typically more expensive than baseline components. The higher MPCs of more efficient products can affect revenue and gross margin, which will then affect the total volume of future shipments, and cash flows of NWGF and MHGF manufacturers. To calculate the MPCs for NWGFs and MHGFs at and above the baseline, DOE performed teardowns for representative units. The data generated from these analyses were then used to estimate the incremental materials, labor, depreciation, and overhead costs for products at each efficiency level. These cost breakdowns and product markups were validated and revised with input from manufacturers during manufacturer interviews and with input from NOPR and NODA written comments. For a complete description of the MPCs, see chapter 5 of the SNOPR TSD.

c. Shipment Scenarios

DOE used the GRIM to estimate industry revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in sales volumes and efficiency distribution can significantly affect manufacturer finances over the course of the analysis period. For this analysis, DOE used the NIA's annual shipment forecasts derived from the shipments analysis from 2016 (the reference year) to 2051 (the terminal year of the analysis period). In the shipments analysis, DOE estimates the distribution of efficiencies in the no-new-standards case and standards cases for all product classes. To account for a regional standard at TSL 3, shipment values in the GRIM are broken down by region, "north" and "rest of country," for the NWGF product classes.

The NIA assumes that product efficiencies in the no-new-standards case that do not meet the energy conservation standard in the standards case either "roll up" to meet the amended standard or switch to another product such as a heat pump or electric furnace. In other words, the market share of products that are below the energy conservation standard is added to the market share of products at the minimum energy efficiency level allowed under each standard case. The market share of products above the energy conservation standard is assumed to be unaffected by the standard in the compliance year. For a complete description of the shipments analysis see section IV.G.

d. Manufacturer Markup Scenarios

As discussed in section IV.J.2.b, MSPs include direct manufacturing production costs (*i.e.*, labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. For the MIA, DOE modeled three standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin markup scenario; (2) a preservation of per-unit operating profit markup scenario; and (3) a tiered markup. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash-flow impacts. The industry cash flow analysis results in section V.B.2.a present the impacts of the upper and lower bound markup scenarios on INPV. For the AFUE standards, the preservation of gross margin markup scenario represents the upper bound markup scenario and the tiered markup scenario represents the lower bound markup scenario. For the standby and off mode standards, preservation of gross margin markup scenario represents the upper bound markup scenario and the per-unit preservation of operating profit markup scenario represents the lower bound.

Under the preservation of gross margin percentage markup scenario, DOE applied a single uniform "gross margin percentage" markup across all efficiency levels, which assumes that following amended standards, manufacturers would be able to maintain the same amount of profit as a percentage of revenue at all efficiency levels within a product class. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly-available financial information for NWGF and MHGF manufacturers, as well as comments from manufacturer interviews, DOE assumed the average non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.34 for NWGFs and 1.27 for MHGFs. DOE assumes that this markup scenario represents the upper bound of the NWGF and MHGF industry's profitability in the standards case because manufacturers are able to fully pass on additional costs due to standards to consumers.

In the per-unit preservation-of-operating-profit markup scenario, as the cost of production increases in the standards case, manufacturers reduce their markups to a level that maintains no-new-standards case operating profit. In this scenario, the industry maintains its operating profit in absolute dollars after the standard but not on a percentage basis, as seen in the preservation of gross margin markup scenario. Manufacturer markups are set so that operating profit in the standards case is the same as in the no-new-standards case one year after the compliance date of the amended energy conservation standards. As a result, manufacturers are not able to earn additional operating profit from the increased production costs and the investments that are required to comply with amended standards. However, manufacturers are able to maintain the same operating profit in the standards case that was earned in the no-new-standards case. Therefore, in percentage terms, the operating margin is reduced between the no-new-standards case and the standards cases.

DOE also modeled a tiered markup scenario, which reflects the industry's "good, better, best" pricing structure. DOE implemented the tiered markup scenario because multiple manufacturers stated in interviews that they offer multiple tiers of product lines that are differentiated, in part, by efficiency level. Higher efficiency is one differentiator of premium products over the baseline product. As a result, higher efficiency products generally command a higher markup than lower efficiency products. Several manufacturers suggested that amended standards would lead to a reduction in premium markups and reduce the profitability of higher efficiency products. During interviews, manufacturers provided information on the range of typical efficiency levels in the "good, better, best" tiers. DOE used this information to estimate markups for NWGFs and MHGFs under a tiered pricing strategy in the no-new-standards case. In the standards cases, DOE modeled the situation in which amended standards result in a reduction of product differentiation, compression of the markup tiers, and an overall reduction in profitability.

3. Discussion of Comments

During the NOPR public meeting, interested parties commented on the assumptions and results of the NOPR analysis. Interested parties also submitted written comments addressing several topics including markup scenarios, alternative heating products, direct employment impacts, lessening of competition, cumulative regulatory burden, compliance date of amended standards, regulatory flexibility analysis, and the impacts of the 2014 furnace fan final rule on the GRIM.

a. Direct Employment Impacts

Lennox and Metal-Fab commented that DOE should factor the lower bound of employment impacts into the economic justification of the standard (Lennox, No. 0125 at p. 11; Metal-Fab, No. 0192 at pp. 1–2). DOE considered the entire range of potential employment impacts, including the lower bound, for this SNOPR. The Department analyzed direct employment impacts in section V.B.2.b of both the 2015 March NOPR and this SNOPR.

b. Cumulative Regulatory Burden

Lennox, Goodman, and Rheem provided a list of rulemakings that they requested be incorporated into DOE's cumulative regulatory burden analysis. (Lennox, No. 125 at p. 5, 13–14) (Goodman, No. 0135 at pp. 8–9) (Rheem, No. 142 at p. 13).

Of the rulemakings these manufacturers requested DOE include in the cumulative regulatory burden analysis, the energy conservation standards for commercial warm-air furnaces, furnace fans, commercial air conditioners and heat pumps, and single package vertical air conditioners and heat pumps were already included in the March 2015 NOPR. 80 FR 13172. Other energy conservation standards requested by manufacturers were intentionally excluded from the cumulative regulatory burden analysis. As outlined in appendix A to 10 CFR part 430, subpart C, DOE considers "other significant product-specific regulations that will take effect within three years of the effective date of the standard under consideration and will affect significantly the same manufacturers." (Section 10(g)(2), 10 CFR part 430, subpart C, appendix A.)

At the time of the residential furnaces NOPR publication, the compliance years of energy conservation standards for package terminal air conditioners and heat pumps (2017), commercial refrigeration equipment (2017), electric motors (2016), and walk-in coolers and freezers (2017) fell outside of the 2018 to 2024 cumulative regulatory burden window, based on the proposed rule's 2021 compliance year. For the SNOPR, the cumulative regulatory burden window has changed, now ranging from 2019 to 2025 based on this SNOPR's proposed 2022 compliance year. As a result, compliance with regulations for residential air conditioners and heat pumps has been added to the cumulative regulatory burden list for this SNOPR. The compliance dates for package terminal air conditioners and heat pumps, commercial refrigeration equipment, electric motors, and walk-in coolers and freezers still fall outside of the 2019 to 2025 cumulative regulatory burden window and are not included in this cumulative regulatory burden analysis. Similarly, the regional standards enforcement rulemaking has a 2016 compliance year and falls outside of the scope of this rule's cumulative regulatory burden time frame.

Additionally, the rulemakings for commercial and industrial fans and blowers and regional standards enforcement were in preliminary stages at the time of the residential furnaces NOPR publication. There was insufficient information to determine the effective dates and potential cumulative regulatory impact of these rules. For this SNOPR, DOE has included the commercial and industrial fans and blowers rulemaking in the list of regulations that could present cumulative regulatory burden in section V.B.2.e.

DOE recognizes that changes to test procedures can result in increases in certification costs above typical annual spending due to the need to re-certify large numbers of basic models within a limited period of time. When appropriate, these testing costs are accounted for as one-time expenses or as conversion costs in the analysis of the energy conservation standard. Thus, the costs of test procedure rulemakings were captured in this SNOPR.

Manufacturers also expressed concern that DOE did not quantify the cumulative negative INPV impacts of rulemakings considered in the cumulative regulatory burden analysis in the March 2015 NOPR. (Goodman, No. 0135 at p. 9; Ingersoll Rand, No. 0156 at pp. 9–10). Goodman provided a specific list—citing the Small, Large, and Very Large Commercial Package Air Conditioners and Heating Equipment,[159] Furnace Fans,[160] Packaged Terminal Air Conditioners and Heat Pumps,[161] and Commercial Warm Air Furnaces [162] energy conservation standards as examples of rulemakings that have significant projected changes in INPV. For this SNOPR, DOE estimates that the potential net INPV impacts of these rules range from a decrease of $530.2 million to an increase of $38.6 million, or a decrease of 24.7 percent to an increase of 1.8 percent. DOE notes that these manufacturer impacts are balanced by net consumer benefit projections of $25 billion using a 7-percent discount rate and $78 billion using a 3-percent discount rate as well as net projected carbon dioxide emission reductions of 1,075.6 million metric tons.

c. Impacts of the July 2014 Furnace Fan Final Rule on GRIM

In its comments, AHRI asserted that DOE underestimated in the March 2015 NOPR the adverse impact on manufacturers in its modeling of the GRIM. AHRI suggested DOE was not fully recognizing the impacts of the overlap between the furnace fan and NWGF and MHGF rules. In particular, AHRI expressed concern about the decline in free cash flow due to the successive redesigns associated with the 2014 furnace fan final rule and NWGF and MHGF rule. (AHRI, No. 0159 at pp. 66–67)

For this SNOPR, DOE considered the July 2014 furnace fan final rule in its NWGF and MHGF analysis. It was explicitly noted in the conclusion section of V.C of the March 2015 NOPR that DOE factored the cumulative impacts of the furnace fan final rule in its selection of a proposed standard level. 80 FR 13119, 13176 (March 12, 2015).

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[159] 81 FR 2420 (Jan. 15, 2016).

[160] 79 FR 38129 (July 3, 2014).

[161] 80 FR 43162 (July 21, 2015).

[162] 81 FR 2420 (Jan. 15, 2016).

In the March 2015 NOPR, the modeling of the GRIM incorporated changes in variable costs for the furnace fan. Changes to the variable costs from the furnace fan standard are reflected as changes to manufacturer production cost in the NWGF and MHGF GRIM. Manufacturer production costs in the GRIM increase in 2019 to reflect the implementation of the 2014 furnace fan final rule. Changes to the fixed costs from the 2014 furnace fan final rule were found in the CRB review, in section V.B.2 of the NOPR. In this SNOPR, DOE integrated both the variable cost impacts and fixed cost impacts of the 2014 furnace fan final rule into the GRIM. The SNOPR GRIM incorporates an adjustment to the MPCs (variable cost impacts) in the standard year of the 2014 furnace fan final rule, 2019, to reflect the changes in furnace fan selection. The SNOPR GRIM also includes the conversion costs from the non-weatherized, non-condensing gas furnace fans; non-weatherized, condensing gas furnace fans; manufactured home non-weatherized, non-condensing gas furnace fans; and manufactured home non-weatherized, condensing gas furnace product classes from the 2014 furnace fan final rule. Those conversion costs (fixed cost impacts) total $24.4 million between the years 2016 and 2019. Those furnace fan conversion costs are in addition the today's proposed rule's conversion costs, which total $54.7 million between the years 2018 and 2022. By incorporating the variable and fixed cost impacts of the 2014 furnace fan final rule, the SNOPR GRIM models the impact of amended MWGF and MHGF standards while taking into account the cash flow impacts of the 2014 furnace fan final rule on the NWGF and MHGF industry.

d. Regulatory Flexibility Analysis

In its comments on the March 2015 NOPR, Mortex stated that DOE did not prepare a regulatory flexibility analysis (Mortex, No. 0157 at p. 4). AHRI and HARDI both were critical of the discussion of the regulatory flexibility analysis provided in the March 2015 NOPR (AHRI, No. 0159 at p. 8; HARDI, No. 0131 at p. 2). HARDI's comments were generic in nature and characterized the NOPR Regulatory Flexibility Analysis as "very brief" but offered no additional data for analysis. AHRI cited select requirements of the Regulatory Flexibility Act, including the requirements for DOE to describe the small entities to which the proposed rule will apply; describe the projected reporting, recordkeeping and other compliance requirements of the proposed rule; and provide an analysis of alternatives that would reduce the burden of regulation on small entities.

In this SNOPR, DOE also presents a revised IRFA to reflect the standards proposed in this SNOPR with additional discussion of significant alternatives and includes discussion of possible exclusion criteria for certain small businesses. The complete IRFA discussion is provided in section VI.B of this notice.

AHRI also noted an inconsistency in the number of small businesses identified by DOE in the March 2015 NOPR. 80 FR 13119, 13172 (March 12, 2015). AHRI went on to comment that small businesses may account for more than 30-percent of the market if the number of small businesses identified is actually five instead of four (AHRI, No. 0159 at p. 7). DOE acknowledges the inconsistency in the NOPR notice and has corrected the inconsistency in this SNOPR. DOE confirms that it has identified five small NWGF and or MHGF manufacturers, three of which are domestic manufacturers.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

For this SNOPR, the analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015*. The methodology is described in chapter 13 and chapter 15 of the SNOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA: GHG Emissions Factors Hub.[163] The FFC upstream emissions are estimated based on the methodology described in chapter 13 of the SNOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

AGL Resources stated that DOE overestimated the upstream benefits of the proposed rule by using much higher fugitive methane emissions values than are typically used in Federal estimates. AGL Resources stated that EPA's 2013 U.S. Greenhouse Gas Inventory and recent research by NOAA and the University of Colorado Boulder report methane leakage rates of around 1 percent. (AGL Resources, No. 0039 at p. 3; AGL Resources, No. 0112 at p. 6) In response, DOE uses an estimate of upstream emissions of methane based on Burnham *et al.* (2012)[164] which, if it were translated to a leakage rate, would be equivalent to 1.3 percent, close to the value cited by AGL Resources. Actual leakage rates of methane at various stages of the production process are highly variable and the subject of ongoing research. DOE reviews and updates the FFC factors annually, and as part of this review, data such as methane leakage rates are updated according to the current scientific consensus.

APPA and EEI stated that DOE only considered the upstream emissions due to electricity generation, ignoring the upstream emissions due to the production of natural gas, propane, or fuel oil. (APPA, No. 0149 at p. 4; EEI, No. 0160 at pp. 8–9; EEI, No. 0179 at pp. 2–3) Contrary to what these commenters contend, DOE did calculate the upstream emissions for natural gas, LPG, and fuel oil, which includes the upstream emissions from fuel production. The methodology is further explained in chapter 13 of the SNOPR TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions (or increases) are estimated using the energy savings (or the increase in electricity use) calculated in the national impact analysis. Because product switching is accounted for in the NIA, the emissions analysis accounts for the impacts of product switching on emissions.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[165] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

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[163] Available at *www.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.*

[164] Burnham, A., J. Han, C.E. Clark, M. Wang, J.B. Dunn, and I. Palou-Rivera. 2012. "Life-Cycle Greenhouse Gas Emissions of Shale Gas, Natural Gas, Coal, and Petroleum." *Environmental Science & Technology* 46 (2): 619–27.

Because the on-site operation of NWGFs and MHGFs requires combustion of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards. Site emissions of these gases were estimated using emissions intensity factors from an EPA publication.[166]

Rheem commented that low-NO_X furnace designs have been available for more than 25 years. As a result, Rheem argued that DOE should include the sales of low-NO_X furnaces in the emissions analysis, and emission savings should be reduced proportionally. (Rheem, No. 0142 at p. 13) For the SNOPR, DOE accounted for low-NO_X furnaces. For the fraction of the market projected to install residential furnaces with low-NO_X burners, DOE used a lower, technology specific emission factor.[167]

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[168] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[169] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[170] On July 28, 2015, the D.C. Circuit issued its opinion regarding CSAPR on remand from the Supreme Court. The court largely upheld CSAPR, but remanded to EPA without vacatur certain States' emission budgets for reconsideration.[171] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[172] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015,* so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards and does not affect the outcome of the cost-benefit analysis. The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants.[173] 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the

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[165] IPCC (2013), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,* Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.), Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[166] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources (Chapter 1) (Available at *www.epa.gov/ttn/chief/ap42/index.html*).

[167] Environmental Protection Agency, *Emission Factor Details* (Available at: *https://cfpub.epa.gov/webfire/index.cfm?action=fire.showfactor&factorid=25416*) (Last accessed April 10, 2016).

[168] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[169] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[170] See *EPA* v. *EME Homer City Generation,* 134 S. Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[171] *EME Homer City Generation, LP* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

[172] See *EME Homer City Generation, LP* v. *EPA,* Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

[173] DOE notes that on June 29, 2015, the U.S. Supreme Court ruled that the EPA erred when the agency concluded that cost did not need to be considered in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units (EGUs) is appropriate and necessary under section 112 of the Clean Air Act (CAA). Michigan v. EPA, 135 S. Ct. 2699 (2015). The Supreme Court did not vacate the MATS rule, and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy conservation standards on SO_2 emissions. Further, the Court's decision does not change the impact of the energy conservation standards on mercury emissions. The EPA, in response to the U.S. Supreme Court's direction, has now considered cost in evaluating whether it is appropriate and necessary to regulate coal- and oil-fired EGUs under the CAA. EPA concluded that a consideration of cost does not alter the EPA's previous determination that regulation of hazardous air pollutants, including mercury, from coal- and oil-fired EGUs is appropriate and necessary. 79 FR 24420 (April 25, 2016).

District of Columbia.[174] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to impact NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions impacts from the standards considered in this SNOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps, and as such, DOE's energy conservation standards would likely impact Hg emissions. DOE estimated mercury emissions impacts using emissions factors based on *AEO 2015,* which incorporates the MATS.

EEI stated that because the *AEO* only addresses final environmental standards, it often makes predictions about the future composition of the electric generating fleet and the related emissions that are unlikely to be borne out by actual experience. EEI commented that the EPA MATS rule and the Clean Power Plan are estimated to significantly reduce coal-based electricity generation, thus reducing emissions from the power sector after 2020. (EEI, No. 0160, pp. 4–5, 8; EEI, No. 0179 at pp. 2–3) EEI stated that because of the Clean Power Plan, there will be no physical reduction of greenhouse gas emissions from electric generation as a result of energy conservation standards, as DOE has stated with other emissions that have upstream mass-based caps or cap-and-trade systems. (EEI, No. 0189–1 at p. 1) Because *AEO 2015* does not account for the Clean Power Plan, EEI requested that DOE consider information found in a recent EPRI/NRDC report that provides updated modeling information reflecting the current and future electric grid, which incorporates the rapid decreases in CO_2, SO_2, and NO_X emissions occurring as a result of various Federal and State policies.[175] (EEI, No. 0179 at pp. 2–3)

In response, DOE notes that *AEO 2015* incorporates the MATS rule, but not the Clean Power Plan, which was issued well after *AEO 2015* was finalized. At the time the SNOPR analysis was conducted, *AEO 2015* was the only source that provides a comprehensive projection of emissions that allows derivation of marginal emissions factors. DOE acknowledges that if the Clean Power Plan is fully implemented following the court challenges, projected emissions of CO_2 would be below those projected in *AEO 2015.* In the context of the current rulemaking, however, accounting for the Clean Power Plan is of only slight relevance because DOE is not projecting any reduction in electricity generation to result from the proposed standards. DOE intends to use *AEO 2016,* which is expected to incorporate the Clean Power Plan, for the final rule.

EEI questioned DOE's conclusion that some emissions will increase due to higher electricity use. EEI stated that based on current trends in power plant retirements, additions of new zero-emission electricity generation, and reductions in the use of electricity in nearly all end-use applications, emissions from electric generation will decrease, not increase. (EEI, No. 0160 at pp. 8–9; EEI, No. 0179 at pp. 2–3) In response, it may be true that on a national level, emissions from electricity generation will decrease. The *AEO 2015* projections include changes in the composition and emissions intensity of power plants across the Nation. The analysis for this rulemaking considers only the change in emissions due to amended or new furnace energy conservation standards, as compared to the *AEO 2015* projections.[176]

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this supplemental proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. To make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this SNOPR.

For this SNOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided in the following subsection, and a more detailed description of the methodologies used is provided in appendices 14A and 14B of the SNOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

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[174] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[175] EPRI/NRDC, *Environmental Assessment of a Full Electric Transportation Portfolio, Volume 1: Background, Methodology, and Best Practices* (Sept. 17, 2015) (EPRI/NRDC Vol. 1) (Available at: *www.epri.com/abstracts/Pages/ProductAbstract.aspx?productId=000000003002006875); see also,* EPRI/NRDC, *Environmental Assessment of a Full Electric Transportation Portfolio, Volume 2: Greenhouse Gas Emissions* (Sept. 17, 2015) (EPRI/NRDC Vol. 2) (Available at: *www.epri.com/abstracts/Pages/ProductAbstract.aspx?productId=000000003002006876); see also,* EPRI/NRDC, *Environmental Assessment of a Full Electric Transportation Portfolio, Volume 3: Air Quality Impacts* (Sept. 17, 2015) (EPRI/NRDC Vol. 3) (Available at: *www.epri.com/abstracts/Pages/ProductAbstract.aspx?productId=000000003002006880).*

[176] Under the Clean Power Plan, emissions of CO_2 electricity generation would be significantly reduced. If the Clean Power Plan is accounted for, DOE expects that the increase in emissions from electricity generation that is projected to result from the proposed standards (due to fuel switching) would be less than projected for this SNOPR. DOE intends to use *AEO 2016,* which is expected to incorporate the Clean Power Plan, for the final rule.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages.[177] As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. Although any numerical estimate of the benefits of reducing carbon dioxide emissions is subject to some uncertainty, that does not relieve DOE of its obligation to attempt to factor those benefits into its cost-benefit analysis. Moreover, the interagency group's SCC estimates are well supported by the existing scientific and economic literature. As a result, DOE has relied on the interagency group's SCC estimates in quantifying the social benefits of reducing CO_2 emissions. Specifically, DOE estimated the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the current SCC values reflect the interagency group's best assessment, based on current data, of the societal effect of CO_2 emissions. The interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC estimate for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules issued by DOE and other agencies.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[178] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.20 presents the values in the 2010 interagency group report,[179] which is reproduced in appendix 14A of the SNOPR TSD.

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[177] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

[178] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[179] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

TABLE IV.20—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this SNOPR were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[180] Table IV.21 shows the updated sets of SCC estimates from the latest interagency update (*i.e.*, the 2013 update, as revised in July 2015) in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in the 2013 interagency update (as revised in July 2015), which is reproduced in appendix 14B of the SNOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.21—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[181]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2015$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.4, $40.6, $63.2, and $118 per metric ton avoided (values expressed in 2015$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the

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[180] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[181] Although uncertainties remain, the revised estimates used for this SNOPR are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, and with input from the public. In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586 (Nov. 26, 2013).

SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

DOE received several comments on the development of and the use of the SCC values in the March 2015 NOPR and the September 2015 NODA analyses. A group of trade associations led by the U.S. Chamber of Commerce objected to DOE's continued use of the SCC in the cost-benefit analysis and stated that the SCC calculation should not be used in any rulemaking until it undergoes a more rigorous notice, review, and comment process. (U.S. Chamber of Commerce, No. 0078 at p. 41) AHRI stated that the interagency process was not transparent and that the estimates were not subjected to peer review. (AHRI, No. 0159 at p. 24) AHRI and the Cato Institute criticized DOE's use of SCC estimates on the basis that they are subject to considerable uncertainty. AHRI also stated that the interagency SCC analysis relied on arbitrary damages functions. The Cato Institute criticized several aspects of the determination of the SCC values by the IWG as being discordant with the best climate science, highly sensitive to input parameters and scope of the models, and not reflective of climate change impacts. The Cato Institute stated that until the integrated assessment models (IAMs) are made consistent with mainstream climate science, the SCC should be barred from use in this and all other Federal rulemakings. (AHRI, No. 0159 at p. 24; Cato Institute, No. 0081 at pp. 1–4, 15–16) HARDI questioned the use of the SCC as part of the economic analysis, stating that the science and rationale behind this metric have been questioned at length in this and previous rulemakings. (HARDI, No. 0131 at p. 2)

In contrast, the Joint Advocates stated that only a partial accounting of the costs of climate change (those most easily monetized) can be provided, which inevitably involves incorporating elements of uncertainty. The Joint Advocates commented that accounting for the economic harms caused by climate change is a critical component of sound benefit-cost analyses of regulations that directly or indirectly limit greenhouse gases. The Joint Advocates stated that several Executive Orders direct Federal agencies to consider non-economic costs and benefits, such as environmental and public health impacts. (Joint Advocates, No. 0126 at pp. 2–3) Furthermore, the Joint Advocates argued that without an SCC estimate, regulators would by default be using a value of zero for the benefits of reducing carbon pollution, thereby implying that carbon pollution has no costs. The Joint Advocates stated that it would be arbitrary for a Federal agency to weigh the societal benefits and costs of a rule with significant carbon pollution effects but to assign no value at all to the considerable benefits of reducing carbon pollution. (Joint Advocates, No. 0126 at p. 3)

The Joint Advocates stated that assessment and use of the IAMs in developing the SCC values has been transparent. The Joint Advocates further noted that the Government Accountability Office (GAO) found that the IWG's processes and methods used consensus-based decision making, relied on existing academic literature and models, and took steps to disclose limitations and incorporate new information. The Joint Advocates stated that repeated opportunities for public comment demonstrate that the IWG's SCC estimates were developed and are being used transparently. (Joint Advocates, No. 0126 at p. 4) The Joint Advocates stated that (1) the IAMs used reflect the best available, peer-reviewed science to quantify the benefits of carbon emission reductions; (2) uncertainty is not a valid reason for rejecting the SCC analysis, and (3) the IWG was rigorous in addressing uncertainty inherent in estimating the economic cost of pollution. (Joint Advocates, No. 0126 at pp. 5, 17–18, 18–19) The Joint Advocates added that the increase in the SCC estimate in the 2013 update reflects the growing scientific and economic research on the risks and costs of climate change, but is still very likely an underestimate of the SCC. (Joint Advocates, No. 0126 at p. 4) The Joint Advocates stated that recent research suggests that CO_2 fertilization is overestimated and may be cancelled out by negative impacts on agriculture. (Joint Advocates, No. 0126 at p. 16)

In response to the comments on the SCC, in conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. These uncertainties and model differences are discussed in the IWG's reports, which are reproduced in appendices 14A and 14B of the SNOPR TSD, as are the major assumptions. Specifically, uncertainties in the assumptions regarding climate sensitivity, as well as other model inputs such as economic growth and emissions trajectories, are discussed and the reasons for the specific input assumptions chosen are explained. However, the three integrated assessment models used to estimate the SCC are frequently cited in the peer-reviewed literature and were used in the last assessment of the IPCC. In addition, new versions of the models that were used in 2013 to estimate revised SCC values were published in the peer-reviewed literature (see appendix 14B of the SNOPR TSD for discussion). Although uncertainties remain, the revised estimates that were issued in November 2013 are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, using the best science available, and with input from the public. DOE notes that not using SCC estimates because of uncertainty would be tantamount to assuming that the benefits of reduced carbon emissions are zero, which is inappropriate. Furthermore, the commenters have not offered alternative estimates of the SCC that they believe are more accurate.

As noted previously, in November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586 (Nov. 26, 2013). In July 2015, OMB published a detailed summary and formal response to the many comments that were received. DOE stands ready to work with OMB and the other members of the IWG on further review and revision of the SCC estimates as appropriate.[182]

AGA stated that DOE overstated the benefit of CO_2 reductions by reporting estimates from a global, not national, perspective. AGA and Laclede argued that national benefits from reducing CO_2 would be a fraction of the global SCC value. In addition, AGA and AHRI stated that while global benefits may be informative, they should be excluded from DOE's calculation of net benefits. (AGA, No. 0118 at pp. 31–32; AHRI, No. 0159 at p. 176; Laclede, No. 0141 at p. 22) NPGA commented that the value of CO_2 emission reductions is based on a global value, whereas estimated operating savings of the proposed standards are calculated in terms of U.S. domestic consumer savings. NPGA expressed concern that this unequal comparison overestimates the economic value of potential CO_2 emission reductions. (NPGA, No. 0130 at p. 6) On the other hand, the Joint Advocates stated that a global SCC value must be used to design the economically efficient policies necessary to address climate change. The Joint Advocates stated that because greenhouse gases do not stay within geographic borders, CO_2 emitted by the United States not only creates domestic harms, but also imposes additional and large externalities on the rest of the world, including disproportionate harms to some of the least-developed nations. The Joint Advocates stated that if all countries set their greenhouse gas emission levels based on only their domestic costs and benefits, ignoring the large global externalities, the collective result would be substantially sub-optimal climate protections and significantly increased risks of severe harms to all nations, including to the United States. (Joint Advocates, No. 0126 at pp. 6–7)

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[182] See *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* OMB also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

In response, DOE's analysis estimates both global and domestic benefits of CO_2 emissions reductions. Following the recommendation of the IWG, DOE places more focus on a global measure of SCC. As discussed in appendix 14A of the SNOPR TSD, the climate change problem is highly unusual in at least two respects. First, it involves a global externality: Emissions of most greenhouse gases contribute to damages around the world even when they are emitted in the United States. Consequently, to address the global nature of the problem, the SCC must incorporate the full (global) damages caused by GHG emissions. The other factors DOE considers (such as operating savings) do not have such a global externality, and thus it is not necessary or appropriate to consider those factors globally. Second, climate change presents a problem that the United States alone cannot solve. Even if the United States were to reduce its greenhouse gas emissions to zero, that step would be far from enough to avoid substantial climate change. Other countries would also need to take action to reduce emissions if significant changes in the global climate are to be avoided. Emphasizing the need for a global solution to a global problem, the United States has been actively involved in seeking international agreements to reduce emissions and in encouraging other nations, including emerging major economies, to take significant steps to reduce emissions. When these considerations are taken as a whole, the interagency group concluded that a global measure of the benefits from reducing U.S. emissions is preferable. DOE's approach is not in contradiction of the requirement to weigh the need for national energy conservation, as one of the main reasons for national energy conservation is to contribute to efforts to mitigate the effects of global climate change. DOE notes that the use of domestic rather than global SCC estimates would not affect DOE's selection of proposed standards for NWGFs and MHGFs.

AHRI criticized DOE's inclusion of CO_2 emissions impacts over a time period that it asserts greatly exceeds that used to measure the economic costs of the proposed standards. (AHRI, No. 0159 at pp. 16–18) DOE disagrees. For the analysis of *all* national costs and benefits of standards, DOE considers the lifetime impacts of products shipped in the period 2022–2051. With respect to energy cost savings, impacts continue until all of the equipment shipped in the analysis period is retired, which could occur well after 2051. With respect to the benefits of CO_2 emissions reductions, DOE likewise evaluates the impacts for products shipped during the analysis period and used until they are retired. Because CO_2 emissions in a given year (*e.g.,* 2050) have a long residence time in the atmosphere, they contribute to radiative forcing, which affects global climate, for a long time. Accordingly, emissions reductions occurring in a given year in which products are operated (*e.g.,* 2050), will have environmental benefits not only in that year, but also in many years to come. The SCC estimates developed by the IWG are meant to capture these benefits extending over many years by representing the full discounted value (using an appropriate range of discount rates) of emissions reductions occurring in a given year. Thus, in the case of both consumer economic costs and benefits and the value of CO_2 emissions reductions, DOE is accounting for the lifetime impacts of products shipped in the same analysis period.

Laclede stated that market prices best reflect the cost of CO_2 reduction benefits to U.S. residents, which are around or lower than DOE's lowest SCC value. (Laclede, No. 0141 at p. 22) In response, DOE notes that market prices are simply a reflection of the conditions in specific emissions markets in which emissions caps have been set. Neither the caps nor the resulting prices of traded emissions are intended to reflect the full range of domestic and global impacts from anthropogenic climate change over the appropriate time scales. Consequently, DOE is maintaining its current approach.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions from electricity generation using benefit per ton estimates from the Regulatory Impact Analysis for the Clean Power Plan Final Rule, published in August 2015 by EPA's Office of Air Quality Planning and Standards.[183] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 using discount rates of 3 percent and 7 percent; these values are presented in appendix 14C of the SNOPR TSD. DOE primarily relied on the low estimates to be conservative.[184] The national average low values for 2020 (in 2015$) are $3,187/ton at a 3-percent discount rate and $2,869/ton at a 7-percent discount rate. DOE developed values specific to the end-use category for NWGFs and MHGFs using a method described in appendix 14C of the SNOPR TSD. For this analysis DOE used linear interpolation to define values for the years between 2020 and 2025 and between 2025 and 2030; for years beyond 2030 the value is held constant.

DOE estimated the monetized value of NO_X emissions reductions from gas furnaces using benefit-per-ton estimates from the EPA's "Technical Support Document Estimating the Benefit per Ton of Reducing PM–2.5 Precursors from 17 Sectors." [185] Although none of the sectors refers specifically to residential and commercial buildings, DOE believes that the sector called "Area sources" would be a reasonable proxy for residential and commercial buildings. "Area sources" represents all emission sources for which States do not have exact (point) locations in their emissions inventories. Since exact locations would tend to be associated with larger sources, "area sources" would be fairly representative of small dispersed sources like homes and businesses. The EPA Technical Support Document provides high and low estimates for 2016, 2020, 2025, and 2030 at 3-percent and 7-percent discount rates. As with the benefit-per-ton estimates for NO_X emissions reductions from electricity generation, DOE primarily relied on the low estimates to be conservative.

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[183] Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report.

[184] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits are primarily based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the SNOPR TSD for citations for the studies mentioned above.)

[185] *www.epa.gov/sites/production/files/2014-10/documents/sourceapportionmentbpttsd.pdf.*

DOE multiplied the emissions reduction (metric tons) in each year by the associated $/metric ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates for the final rule.

AGA and AGL Resources stated that DOE failed to monetize the impacts of increased Hg, SO_2, and N_2O emissions as it did for the reductions in CO_2 and NO_X emissions. (AGA, No. 0118 at p. 30; AGL Resources, No. 0112 at p. 6) DOE is still evaluating the appropriate monetization of SO_2, N_2O, and Hg emissions in energy conservation standards rulemakings. DOE notes that it has also not monetized the impacts of the projected decrease in methane emissions, but this benefit would far outweigh the costs of increased SO_2, N_2O, and Hg emissions.[186]

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015*. NEMS, which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector, produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption, and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the SNOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

EEI stated that DOE should consider the impacts of the Clean Power Plan when assessing impacts on the utility sector. (EEI, No. 0160 at pp. 4–5) As discussed above, *AEO 2015* does not incorporate the Clean Power Plan, and at the time the SNOPR analysis was conducted, *AEO 2015* was the only source that provides data that allows derivation of coefficients that DOE uses in the utility impact analysis. DOE intends to use *AEO 2016,* which will incorporate the Clean Power Plan, for the final rule.

Several gas utilities and gas utility associations stated that DOE should analyze the impact of the proposed rule on natural gas utilities, especially because of the potential for switching away from natural gas to other energy sources. (AGL Resources, No. 0112 at pp. 7–8; AGA, No. 0118 at pp. 6, 42; APGA, No. 0106 at p. 12; CGS, No. 0098 at p. 1; Vectren, No. 0111 at p. 1, 6; Laclede, No. 0141 at p. 36) AGA stated that the Process Rule requires DOE to analyze the impact of standards on gas utilities. (AGA, No. 0118 at pp. 41–42) AGA, APGA, CGS, and Vectren stated that DOE should also consider the impact on natural gas local distribution companies and retail natural gas customers, who may see increased natural gas prices due to fuel switching. (AGA, No. 0118 at pp. 6, 42; APGA, No. 0106 at p. 16; CGS, No. 0098 at p. 1; Vectren, No. 0111 at p. 1, 6)

In response to the comments, DOE conducted a preliminary evaluation of the potential impact of the currently-proposed standards on gas utilities. DOE found that such evaluation is complicated by the upward trend in the use of natural gas revenue decoupling.[187] With revenue decoupling regulation, the revenues of regulated natural gas utilities are essentially fixed by the public utility commission. If a utility's actual revenues are above the fixed level due to a larger volume of sales than expected, customers receive a credit from the utility for the difference; if actual revenues are below the fixed level due to a smaller volume of sales than expected, the utility issues a customer surcharge for the difference. To this end, a utility's revenues are decoupled from its volume of sales because its revenues are fixed as sales fluctuate. With revenue decoupling, a decrease in gas sales due to energy conservation standards would not necessarily have a negative impact on gas utilities. DOE welcomes comments on how energy conservation standards may affect gas utilities in the context of growing use of revenue decoupling.

With respect to retail natural gas prices, DOE finds it implausible that a decrease in gas consumption (from use of more-efficient furnaces and switching away from gas furnaces) would increase gas prices. As discussed in section IV.F.4 of this SNOPR, the more likely effect would be a decrease in prices. DOE recognizes that switching away from gas on a very large scale would mean that fixed costs would be distributed among a smaller customer base, thereby putting upward pressure on prices, but with the modest degree of switching projected to result from the currently-proposed standards, such an outcome is highly unlikely.

NPGA stated that mass switching away from propane would severely impact many retail propane marketers, over 95 percent of whom are small businesses. (NPGA, No. 0130 at p. 5) In response, the extent of switching from LPG-fired furnaces projected to result from the currently-proposed standards is significantly less than was the case with the standards proposed in the March 2015 NOPR. Although DOE expects that the impact on retail propane marketers would be small, DOE does not have sufficient information to reliably estimate the potential impact. If stakeholders are able to provide relevant data, including annual propane sales (in gallons and dollars) for a representative sample of retail propane marketers, DOE will undertake an evaluation as it prepares the final rule.

AGL Resources and Camilla stated that by disproportionally raising the minimum efficiency of NWGFs relative to electric heat pumps and electric furnaces, and by causing a significant amount of fuel switching, DOE has put natural gas utilities in a position of competitive disadvantage. (AGL Resources, No. 0039 at pp. 1, 3–4 ; AGL

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[186] The total estimated reduction in methane emissions from the proposed AFUE standards is 2.8 billion tons, while the total estimated increase is 77 thousand tons for SO_2 emissions, 1.07 thousand tons for N_2O emissions, and 0.3 tons for Hg emissions (see Table V.30).

[187] Natural Gas Revenue Decoupling Regulation: Impacts on Industry (July 2010) (Available at: *http://www1.eere.energy.gov/manufacturing/states/pdfs/nat-gas-revenue-decoupling-final.pdf*).

Resources, No. 0112 at pp. 7–8; Camilla, No. 0092 at p. 1) In response, DOE disagrees that the proposed standards would be disproportionally raised for NWGFs. On the contrary, the efficiency standards for CACs and heat pumps have been raised several times over the past two decades, while standards for NWGFs did not change during the same period. Furthermore, DOE is currently undertaking a rulemaking to consider amended energy conservation standards for residential central air conditioners and heat pumps. See, 80 FR 81785 (December 31, 2015).

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by consumers on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the products to which the new standards apply and other goods and services; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[188] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[189] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from amended energy conservation standards for NWGFs and MHGFs.

DOE estimated indirect national employment impacts for the amended NWGFs and MHGFs standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (ImSET).[190] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, for the SNOPR, DOE used ImSET only to generated results for a near-term timeframe (2022–2027), where these uncertainties are reduced.

The Joint Consumer Commenters stated that DOE did not account for the macroeconomic benefit of stimulating the economy by reducing the cost of energy and diverting spending to other things that tend to have higher economic multipliers, thus accelerating economic growth. The Joint Consumer Commenters stated that greater economic activity from the increase in consumer disposable income raises employment levels in other sectors. (Joint Consumer Commenters, No. 0123 at pp. 23–24) In response, increasing consumer disposable income does not necessarily result in greater economic activity. To the extent that the economy approaches full employment, additional stimulus from a shift in spending toward more labor-intensive sectors is not likely to significantly add to economic growth. In the context of the total economy, the long-run potential stimulus from an energy conservation standard would be extremely difficult to measure.

AHRI stated that DOE provides no reason for its selection of a short-run model to evaluate the indirect employment impact analysis. AHRI stated that qualitatively discussing the long-run impacts means that the cost are not adequately considered in the quantitative analysis and are consequently underestimated. (AHRI, No. 0159 at p. 18)

In response, DOE has tentatively concluded that the primary options available to estimate employment impacts of energy efficiency policies are sectoral multipliers, input-output models, and macroeconomic (*i.e.,* general equilibrium) simulation models. Macroeconomic simulation models allow for the most flexibility of the three options, particularly in portraying differential impacts over time, but this temporal detail comes at the cost of sectoral detail. The developers of ImSET evaluated several macroeconomic simulation models used by other Federal agencies and found none well-suited to the kinds of sectoral relationships and impacts following the adoption of an energy efficiency standard. Although it is a static model, ImSET captures the complexities of intersectoral buying-selling relationships. Additionally, by streamlining the temporal aspects of the model, it is possible to track the differential impacts of changes in energy cost as compared to changes in capital or maintenance cost, each of which can impact sectoral multipliers in different ways. DOE is reluctant to use ImSET to quantify long-run impacts, because ImSET relies on fixed sectoral capital-labor coefficients, while in practice these coefficients may shift in the long run in response to price effects following energy efficiency standards. Since input/output models are fundamentally short-run disequilibrium models, DOE provides quantitative results only for the first and fifth year of the standards.

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[188] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[189] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

[190] Livingston, OV, SR Bender, MJ Scott, and RW Schultz (2015). ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide. Pacific Northwest National Laboratory. PNNL–24563.

AGL Resources stated that DOE's model did not account for fuel switching in the employment impact analysis. (AGL Resources, No. 0112 at p. 7) In response, DOE notes that because the employment impact analysis uses the results of the NIA, it accounts for product switching that is captured in the NIA.

For more details on the employment impact analysis, see chapter 16 of the SNOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for NWGFs and MHGFs. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for NWGFs and MHGFs, and the standards levels that DOE is proposing to adopt in this SNOPR. Additional details regarding DOE's analyses are contained in the SNOPR TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of nine AFUE TSLs and three separate standby mode and off mode TSLs for NWGFs and MHGFs. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. TSLs are numbered in order of ascending national energy savings. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the SNOPR TSD.

Table V.1 presents the AFUE TSLs and the corresponding efficiency levels for NWGFs and MHGFs that DOE has identified for potential amended energy conservation standards for these products. TSL 9 represents the maximum technologically feasible ("max-tech") energy efficiency for both product classes and therefore maximum potential national energy savings. TSL 8 consists of an efficiency level at 80-percent AFUE for small NWGFs at or below an input capacity of 55 kBtu/h and an efficiency level at 95-percent AFUE for large NWGFs. For all MHGFs, TSL 8 consists of the efficiency level that represents 95-percent AFUE. TSL 7 consists of intermediate efficiency levels at 95-percent AFUE for both product classes. For NWGFs, TSL 6 consists of an efficiency level at 80-percent AFUE for small NWGFs at or below an input capacity of 55 kBtu/h and an efficiency level at 92-percent AFUE for large NWGFs. For all MHGFs, TSL 6 is 92-percent AFUE. TSL 5 consists of intermediate efficiency levels at 92-percent AFUE for both product classes. For NWGFs, TSL 4 consists of the efficiency level that represents 80-percent AFUE for small NWGFs at or below an input capacity of 60 kBtu/h and the efficiency level that represents 92-percent AFUE for large NWGFs. For all MHGFs, TSL 4 consists of the efficiency level that represents 92-percent AFUE. TSL 3 consists of the efficiency levels that represent 95-percent AFUE for the Northern region for both product classes, and the baseline efficiency level (80-percent AFUE) for the Rest of Country. For NWGFs, TSL 2 consists of the efficiency level that represents 80-percent AFUE for small NWGFs at or below an input capacity of 70 kBtu/h and the efficiency level that represents 92-percent AFUE for large NWGF. For all MHGFs, TSL 2 consists of the efficiency level that represents 92-percent AFUE. For NWGFs, TSL 1 consists of the efficiency level that represents 80-percent AFUE for small NWGFs at or below an input capacity of 80 kBtu/h and the efficiency level that represents 92-percent AFUE for large NWGFs. For all MHGFs, TSL 1 consists of the efficiency level that represents 92-percent AFUE standard.

TABLE V.1—TRIAL STANDARD LEVELS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE AFUE STANDARDS

TSL	AFUE	
	Non-weatherized gas furnace	Mobile home gas furnace
1	92% (>80 kBtu/h) 80% (≤80 kBtu/h).	92%.
2	92% (>70 kBtu/h) 80% (≤70 kBtu/h).	92%.
3	95% (North) 80% (Rest of Country)	95% (North). 80% (Rest of Country).
4	92% (>60 kBtu/h) 80% (≤60 kBtu/h).	92%.
5	92%	92%.
6	92% (>55kBtu/h) 80% (≤55 kBtu/h).	92%.
7	95%	95%.
8	95% (>55 kBtu/h) 80% (≤ 55 kBtu/h).	95%.
9	98%	96%.

Table V.2 presents the standby mode and off mode TSLs and the corresponding efficiency levels (values expressed in watts) that DOE considered for NWGFs and MHGFs. DOE considered three efficiency levels. TSL 3 represents the maximum technologically feasible ("max-tech") energy efficiency for both product classes, TSL 2 represents efficiency level 2 for both product classes, and TSL 1 represents efficiency level 1 for both product classes.

TABLE V.2—TRIAL STANDARD LEVELS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS

TSL	Standby and off mode electrical power consumption (watts)	
	Non-weatherized gas furnace	Mobile home gas furnace
1	9.5	9.5
2	9.2	9.2
3	8.5	8.5

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on NWGF and MHGF consumers by looking at the effects potential standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. In addition, some consumers may choose to switch to an alternative heating system rather than purchase and install a NWGF if they judge the economics to be favorable. DOE estimated the extent of switching at each TSL using the consumer choice model discussed in section IV.F.9.

Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. In cases where consumers are predicted to switch, the inputs include the total installed costs, operating costs, and product lifetime for the chosen heating system. Chapter 8 of the SNOPR TSD provides detailed information on the LCC and PBP analyses.

Key outputs of the LCC analysis are the average LCC savings (or cost) relative to the no-new-standards case efficiency distribution for each product class of residential NWGFs and MHGFs, and the percentage of consumers for whom the LCC under an amended standard would increase (net cost).

DOE also performed a PBP analysis as part of the consumer impact analysis. The PBP is the number of years it would take for the consumer to recover the increased costs of a higher-efficiency product as a result of energy savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting.

The simple payback is measured relative to the baseline product. In contrast, the LCC savings are measured relative to the no-new-standards case efficiency distribution in the compliance year. No impacts occur when the no-new-standards case efficiency for a specific consumer equals or exceeds the efficiency at a given TSL; a standard would have no effect because the product installed would be at or above that standard level without amended standards.

For NWGFs, the LCC and PBP results at each efficiency level include consumers that would purchase and install a NWGF at that level, and also consumers that would choose to switch to an alternative heating product rather than purchase and install a NWGF at that level.[191] The impacts for consumers that switch depend on the product that they choose (heat pump or electric furnace) and the NWGF that they would purchase in the no-new-standards case. The extent of projected product/fuel switching (in 2022) is shown in Table V.3 for each TSL for NWGFs. The degree of switching increases at higher-efficiency TSLs where the installed cost of a NWGF is very high for some consumers. As discussed in section IV.F.9, DOE also conducted sensitivity analysis using high and low switching estimates (based on paybacks of 2.5 and 4.5 years, respectively around the reference value of 3.5 years). Table V.4 presents the projected amount of switching in 2022 for the high and low switching scenarios, as well as the no switching and default switching scenarios. For the proposed standards (TSL 6), the total switching is 6.0% in the low case and 7.9% in the high case; the total switching in the default case in 6.9%. See appendix 8J of the SNOPR TSD for more details.

TABLE V.3—RESULTS OF FUEL SWITCHING ANALYSIS FOR NON-WEATHERIZED GAS FURNACES IN 2022

[% of consumers]

Consumer option	Trial standard level								
	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)	6 (%)	7 (%)	8 (%)	9 (%)
Purchase NWGF at Standard Level	98.5	96.6	98.0	95.9	88.5	93.2	86.5	91.6	84.1
Switch to Heat Pump *	1.2	2.9	1.6	3.4	9.7	5.8	11.6	7.2	13.6
Switch to Electric Furnace *	0.3	0.5	0.5	0.7	1.8	1.1	2.0	1.2	2.4
Total	100	100	100	100	100	100	100	100	100

* Includes switching from a gas water heater to an electric water heater.
Note: Components may not sum due to rounding.

TABLE V.4—COMPARISON OF RESULTS FOR FUEL SWITCHING SCENARIOS FOR NON-WEATHERIZED GAS FURNACES IN 2022

TSL	Fraction of consumers switching to				Fraction of consumers switching to			
	Heat pump, % *				Electric furnace, % *			
	No	Low	High	Ref.	No	Low	High	Ref.
1	0.0	0.9	1.5	1.2	0.0	0.3	0.3	0.3
2	0.0	2.4	3.4	2.9	0.0	0.5	0.5	0.5
3	0.0	1.3	2.0	1.6	0.0	0.5	0.5	0.5
4	0.0	2.8	4.0	3.4	0.0	0.7	0.8	0.7
5	0.0	8.6	10.9	9.7	0.0	1.5	2.2	1.8
6	0.0	5.0	6.7	5.8	0.0	1.0	1.2	1.1
7	0.0	10.5	12.9	11.6	0.0	1.7	2.5	2.0
8	0.0	6.5	8.4	7.2	0.0	1.1	1.4	1.2
9†	0.0	12.4	15.2	13.6	0.0	2.0	3.0	2.4

* Includes switching from a gas water heater to an electric water heater.
Note: "No" means no switching scenario; Low means low switching scenario (2.5 year payback); High means high switching scenario (4.5 year payback); and Ref. means DOE's default switching case (3.5 year payback).

Table V.5 through Table V.8 show the LCC and PBP results for the TSL levels considered for each product class for AFUE standards. Table V.9 compares the average LCC savings, simple PBP, and percentage of consumers experiencing net cost at each AFUE efficiency level for the alternative product switching scenarios, as well as the no switching and DOE's default switching scenario. Table V.10 through Table V.13 show the LCC and PBP results for the TSLs considered for each product class for standby mode and off mode standards. The LCC and PBP results for NWGFs include both residential and commercial users. Results for all efficiency levels are reported in chapter 8 of the SNOPR TSD.

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[191] DOE did not analyze switching for MHGFs because the installed cost differential is relatively small between condensing and non-condensing furnaces, so the incentive for switching is limited.

In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this notice). The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR NON-WEATHERIZED GAS FURNACE AFUE STANDARDS

TSL	AFUE (%)	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	92/80*	2,375	652	10,512	12,887	6.1	21.5
2	92/80*	2,469	635	10,244	12,714	6.0	21.5
3	95/80**	2,552	625	10,108	12,661	6.4	21.5
4	92/80*	2,512	628	10,126	12,638	5.9	21.5
5	92†	2,635	612	9,859	12,493	6.4	21.5
6	92/80*	2,576	618	9,971	12,547	6.1	21.5
7	95†	2,742	597	9,608	12,350	6.5	21.5
8	95/80*	2,672	604	9,737	12,410	6.2	21.5
9	98 (Max-Tech)†	2,858	586	9,403	12,261	6.9	21.5

*The first number refers to the standard for large NWGFs; the second refers to the standard for small NWGFs. The input capacity threshold definitions for small NWGFs are as follows: TSL 1: 80 kBtu/h; TSL 2: 70 kBtu/h; TSL 4: 60 kBtu/h; TSL 6: 55 kBtu/h; TSL 8: 55 kBtu/h.

**The first number refers to the efficiency level for the North; the second number refers to the efficiency level for the Rest of Country.

†Refers to national standards.

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR NON-WEATHERIZED GAS FURNACE AFUE STANDARDS

TSL	AFUE %	Life-cycle cost savings	
		Average LCC savings (2015$)	Percentage of consumers that experience net cost (%)
1	92/80*	676	2.1
2	92/80*	730	4.7
3	95/80**	597	6.7
4	92/80*	741	6.6
5	92†	617	17.1
6	92/80*	692	11.1
7	95†	561	22.2
8	95/80*	609	15.2
9	Max Tech†	506	34.2

*The first number refers to the standard for large NWGFs; the second refers to the standard for small NWGFs. The input capacity threshold definitions for small NWGFs are as follows: TSL 1: 80 kBtu/h; TSL 2: 70 kBtu/h; TSL 4: 60 kBtu/h; TSL 6: 55 kBtu/h; TSL 8: 55 kBtu/h.

**The first number refers to the efficiency level for the North; the second number refers to the efficiency level for the Rest of Country.

†Refers to national standards.

Note: The savings represent the average LCC for affected consumers.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR MOBILE HOME GAS FURNACE AFUE STANDARDS

TSL	AFUE (%)	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1, 2, 4, 5, 6	92	1,667	698	10,924	12,591	1.7	21.5
3	95/80*	1,691	707	11,062	12,752	2.3	21.5
7, 8	95	1,800	680	10,643	12,443	2.7	21.5
9	96 (Max Tech)	1,846	677	10,599	12,445	3.1	21.5

*The first number refers to the efficiency level for the North; the second number refers to the efficiency level for the Rest of Country.

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MOBILE HOME GAS FURNACE AFUE STANDARDS

TSL	AFUE %	Life-cycle cost savings	
		Average LCC savings (2015$)	Percentage of consumers that experience net cost
1, 2, 4, 5, 6.	92	1,049	8.2
3	95/80*	1,275	5.0
7, 8	95	1,020	13.8
9	96 (Max Tech)	864	25.2

* The first number refers to the efficiency level for the North; the second number refers to the efficiency level for the Rest of Country.
Note: The savings represent the average LCC for affected consumers.

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR PRODUCT SWITCHING SCENARIOS FOR NON-WEATHERIZED GAS FURNACE AFUE STANDARDS

TSL	Average LCC savings				Simple payback period				% of Consumers experiencing net cost			
	2015$				Years				%			
	No	Low	High	Ref.	No	Low	High	Ref.	No	Low	High	Ref.
1*	554	769	534	676	6.32	6.08	6.28	6.15	2.2	2.0	2.3	2.1
2*	561	801	610	730	6.28	5.91	6.16	5.99	5.2	4.5	5.0	4.7
3**	523	548	512	597	6.52	6.34	6.55	6.42	6.6	6.5	7.0	6.7
4*	575	794	649	741	6.27	5.87	6.09	5.93	7.2	6.4	6.9	6.6
5†	363	657	542	617	7.17	6.27	6.59	6.37	19.7	16.8	17.6	17.1
6*	476	730	620	692	6.60	6.00	6.23	6.07	12.7	10.9	11.5	11.1
7†	367	595	500	561	7.26	6.40	6.68	6.49	25.0	21.8	22.8	22.2
8*	451	641	550	609	6.70	6.11	6.33	6.18	16.9	14.9	15.8	15.2
9†	354	539	452	506	7.70	6.80	7.14	6.91	37.4	33.6	34.9	34.2

* Refers to TSLs with separate standards for small and large NWGFs. The input capacity threshold definitions for small NWGFs are as follows: TSL 1: 80 kBtu/h; TSL 2: 70 kBtu/h; TSL 4: 60 kBtu/h; TSL 6: 55 kBtu/h; TSL 8: 55 kBtu/h.
** Regional standards.
† Refers to national standards.
Note: The savings represent the average LCC for affected consumers. The PBP is measured relative to the baseline product. No means no switching scenario; Low means low switching scenario (2.5 year payback); High means high switching scenario (4.5 year payback); and Ref. means DOE's default switching case (3.5 year payback).

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR NON-WEATHERIZED GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS

TSL	Watts	Average costs (2015$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	9.5	2	10	152	153	1.2	21.5
2	9.2	17	10	147	164	9.1	21.5
3	8.5 (Max Tech)	18	9	135	154	7.0	21.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS

TSL	Watts	Life-cycle cost savings	
		Average LCC savings* (2015$)	Percentage of consumers that experience net cost
1	9.5	22	2.4
2	9.2	12	13.0

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS—Continued

TSL	Watts	Life-cycle cost savings	
		Average LCC savings* (2015$)	Percentage of consumers that experience net cost
3	8.5 (Max Tech)	19	8.1

* The savings represent the average LCC for affected consumers.

TABLE V.12—AVERAGE LCC AND PBP RESULTS FOR MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS

TSL	Watts	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1	9.5	2	10	145	146	1.2	21.5
2	9.2	16	9	140	156	8.9	21.5
3	8.5 (Max Tech)	17	9	129	147	6.9	21.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE STANDARDS

TSL	Watts	Life-cycle cost savings	
		Average LCC savings* (2015$)	Percentage of consumers that experience net cost
1	9.5	21	0.4
2	9.2	12	1.0
3	8.5 (Max Tech)	19	0.8

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered AFUE TSLs on low-income households and senior-only households.[192] Table V.14 through Table V.15 compare the average LCC savings and simple PBP at each AFUE efficiency level for the two consumer subgroups, along with the average LCC savings for the entire consumer sample. Because the small furnace efficiency levels at TSLs 1, 2, 4, 6, and 8 and the Rest of Country efficiency level at TSL 3 are at the baseline, these tables only include results for large furnaces or the Northern region for these TSLs. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the SNOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR NON-WEATHERIZED GAS FURNACE AFUE STANDARDS

TSL	Average life-cycle cost savings (2015$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1*	505	793	676	6.8	6.8	6.1
2*	572	750	730	5.7	5.7	6.0
3**	458	657	597	7.4	5.9	6.4

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[192] DOE did not perform a subgroup analysis for the residential furnace standby mode and off mode efficiency levels. The standby mode and off mode analysis relied on the test procedure to assess energy savings for the considered standby mode and off mode efficiency levels. Because the analysis used the same test procedure parameters for all sample households, there is no difference in energy savings between the consumer subgroups and the full sample.

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR NON-WEATHERIZED GAS FURNACE AFUE STANDARDS—Continued

TSL	Average life-cycle cost savings (2015$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
4*	647	905	741	5.7	5.7	5.9
5†	476	775	617	6.0	6.0	6.4
6*	611	890	692	5.7	5.7	6.1
7†	482	692	561	6.0	6.0	6.5
8*	592	770	609	5.7	5.7	6.2
9†	554	662	506	6.1	6.1	6.9

* Refers to TSLs with separate standards for small and large NWGFs. The input capacity threshold definitions for small NWGFs are as follows: TSL 1: 80 kBtu/h; TSL 2: 70 kBtu/h; TSL 4: 60 kBtu/h; TSL 6: 55 kBtu/h; TSL 8: 55 kBtu/h.

** Regional standards.

† Refers to national standards.

Note: The savings represent the average LCC for affected consumers. The PBP is measured relative to the baseline product.

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR MOBILE HOME GAS FURNACE AFUE STANDARDS

TSL	Average life-cycle cost savings (2015$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1, 2, 4, 5, 6	771	642	1,049	3.0	3.3	1.7
3	1,344	1,040	1,275	3.3	3.4	2.3
3, 7, 8	782	609	1,020	4.0	4.5	2.7
9	649	486	864	4.4	5.0	3.1

Note: The savings represent the average LCC for affected consumers. The PBP is measured relative to the baseline product.

c. Rebuttable Presumption Payback Period

As discussed in section III.E.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption payback period for each of the considered TSLs for NWGFs and MHGFs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for residential furnaces and boilers. *Id.* In contrast, the PBPs presented in section V.B.1.a of this SNOPR were calculated using distributions that reflect the range of energy use in the field.

Table V.16 and Table V.17 present the rebuttable-presumption payback periods for the considered AFUE and standby mode/off mode TSLs for NWGFs and MHGFs, respectively. The payback periods for all MHGF AFUE TSLs meet the rebuttable-presumption criterion, but the NWGF AFUE TSLs do not. While DOE examined the rebuttable-presumption criterion, DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment under 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.16—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR NWGF AND MHGF AFUE STANDARDS

TSL	Non-weatherized gas furnaces	Mobile home gas furnaces
1	3.28	0.91
2	3.56	0.91
3	3.08	1.50
4	3.65	0.91
5	3.88	0.91
6	3.74	0.91
7	4.03	1.43
8	3.89	1.43
9	4.45	1.50

TABLE V.17—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR NWGF AND MHGF STANDBY MODE AND OFF MODE STANDARDS

TSL	Standby and off mode electrical power consumption (Watts)	Non-weatherized gas furnaces	Mobile home gas furnaces
1	9.5	1.33	1.20
2	9.2	9.99	9.01
3	8.5	7.71	6.95

2. Economic Impacts on Manufacturers

DOE performed a manufacturer impact analysis to estimate the impact of an amended energy conservation standard on manufacturers of NWGFs and MHGFs. The following section describes the expected impacts on manufacturers at each analyzed TSL. DOE discusses the potential impacts of AFUE and standby mode/off mode standards independently. Chapter 12 of the SNOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. Table V.18 through Table V.21 present the financial impacts of analyzed standards on NWGF and MHGF manufacturers represented by changes in INPV and free cash flow in the year before the standard takes effect as well by the conversion costs that DOE estimates NWGF and MHGF manufacturers would incur at each TSL. To evaluate the range of cash-flow impacts on the NWGF and MHGF industry, DOE modeled three markup scenarios that correspond to the range of anticipated market responses to amended standards. For AFUE standards, DOE modeled a preservation of gross margin markup scenario and a tiered markup scenario. For standby mode and off mode standards, DOE modeled a preservation of gross margin markup scenario and a per-unit preservation of operating profit markup scenario. Each scenario results in a unique set of cash flows and corresponding industry values at each TSL.

In the following discussion, the INPV results refer to the difference in INPV between the no-new-standards case and the standards cases, calculated by summing discounted cash flows from the reference year (2016) through the end of the analysis period (2051). Changes in INPV reflect the potential impacts on the value of the industry over the course of the analysis period as a result of implementing a particular TSL. The results also discuss the difference in cash flows between the no-new-standards case and the standards cases in the year before the compliance date for analyzed standards (2021). This difference in cash flow represents the size of the required conversion costs relative to the cash flow generated by the NWGF and MHGF industry in the absence of amended energy conservation standards.

To assess the upper (less severe) bound of the range of potential impacts on NWGF and MHGF manufacturers, DOE modeled a preservation of gross margin markup scenario. This scenario assumes that in the standards cases, manufacturers would be able to fully pass on higher production costs required to produce more-efficient products to their consumers (*i.e.*, absolute dollar markup would increase). Specifically, the industry would be able to maintain its average no-new-standards case gross margin (as a percentage of revenue) despite the higher product costs in the standards cases and upfront investments to bring products into compliance. DOE assumed the nonproduction cost markup—which includes SG&A expenses, research and development expenses, interest, and profit—to be 1.34 for NWGFs and 1.27 for MHGFs. These markups are consistent with the markups used in the engineering analysis. Typically, as product's price increases as a result of a standard, the less likely manufacturers are to maintain their gross margin percentage. It is unlikely to maintain the gross margin percentage because manufacturers would be fully marking up more expensive products, resulting in significantly higher consumer prices. Therefore, DOE assumes that this scenario represents the upper bound of industry profitability under an amended energy conservation standard.

To assess the lower (more severe) bound of the range of potential impacts of AFUE standards on NWGF and MHGF manufacturers, DOE modeled the tiered markup scenario. DOE implemented the tiered markup scenario because multiple manufacturers stated in interviews that they offer multiple tiers of product lines that are differentiated, in part, by efficiency level. The higher efficiency tiers typically earn premiums (for the manufacturer) over the baseline efficiency tier. Several manufacturers suggested that amended standards would lead to a reduction in premium markups and would reduce the profitability of higher efficiency products. During the MIA interviews, manufacturers provided information on the range of typical ELs in those tiers and the change in profitability at each level. DOE used this information to estimate markups for NWGFs and MHGFs under a tiered pricing strategy in the no-standards case. In the standards cases, DOE modeled the situation in which standards result in less product differentiation, compression of the markup tiers, and an overall reduction in profitability.

To assess the lower (more severe) bound of the range of potential impacts of standby mode and off mode standards on NWGF and MHGF manufacturers, DOE modeled a per-unit preservation of operating profit markup scenario. In this scenario, manufacturer markups are set so that operating profit one year after the compliance date of amended energy conservation standards (2022) is the same as in the no-new-standards case on a per-unit basis. Under this scenario, manufactures do not earn additional operating profit from increased manufacturer production costs and conversion costs incurred as a result of standards but are able to maintain the same operating profit that was earned in the no-new-standards case.

Cash-Flow Analysis Results for Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces AFUE Standards

Table V.18 and Table V.19 present the financial impacts of the analyzed AFUE standards on NWGF and MHGF manufacturers. These impacts are represented by changes in INPV and free cash flow (FCF) in the year before the standard (2021) as well as by the conversion costs that DOE estimates NWGF and MHGF manufacturers would incur at each TSL.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS: AFUE STANDARDS RESULTS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level								
			1	2	3	4	5	6	7	8	9
INPV	2015$ millions	1,104.3	1,097.0	1,101.7	1,104.6	1,119.2	1,118.0	1,142.8	1,126.8	1,147.1	1,100.0
Change in INPV	2015$ millions		(7.3)	(2.7)	0.3	14.8	13.7	38.5	22.5	42.8	(4.3)
	%		(0.7)	(0.2)	0.0	1.3	1.2	3.5	2.0	3.9	(0.4)
FCF (2021)	2015$ millions	69.3	56.8	52.8	43.4	50.7	44.3	47.6	25.1	31.2	(66.0)
Change in FCF	%		(18.0)	(23.8)	(37.4)	(26.9)	(36.0)	(31.4)	(63.7)	(55.0)	(195.2)
Product Conversion Costs	2015$ millions		18.2	18.2	26.9	18.2	18.2	18.2	26.9	26.9	77.4
Capital Conversion Costs	2015$ millions		15.9	24.8	40.1	29.5	43.7	36.5	80.7	67.3	250.4
Total Conversion Costs	2015$ millions		34.1	43.0	67.0	47.8	61.9	54.7	107.6	94.2	327.9

Note: Parentheses indicate negative values.

TABLE V.19—MANUFACTURER IMPACT ANALYSIS: AFUE STANDARDS RESULTS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES—THREE-TIER MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level								
			1	2	3	4	5	6	7	8	9
INPV	2015$ millions	1,104.3	1,031.6	1,005.8	846.8	1,007.0	985.2	1,016.4	729.2	771.6	526.5
Change in INPV	2015$ millions		(72.8)	(98.5)	(257.6)	(97.4)	(119.2)	(88.0)	(375.2)	(332.8)	(577.9)
	%		(6.6)	(8.9)	(23.3)	(8.8)	(10.8)	(8.0)	(34.0)	(30.1)	(52.3)
FCF (2021)	2015$ millions	69.3	56.8	52.8	43.4	50.7	44.3	47.6	25.1	31.2	(66.0)
Change in FCF	%		(18.0)	(23.8)	(37.4)	(26.9)	(36.0)	(31.4)	(63.7)	(55.0)	(195.2)
Product Conversion Costs	2015$ millions		18.2	18.2	26.9	18.2	18.2	18.2	26.9	26.9	77.4
Capital Conversion Costs	2015$ millions		15.9	24.8	40.1	29.5	43.7	36.5	80.7	67.3	250.4
Total Conversion Costs	2015$ millions		34.1	43.0	67.0	47.8	61.9	54.7	107.6	94.2	327.9

Note: Parentheses indicate negative values.

At TSL 1, DOE estimates the change in INPV to range from −$72.8 million to −7.3 million, or a change of −6.6 percent to −0.7 percent. At this level, industry free cash flow in 2021 (the year before the compliance date) is estimated to decrease to $56.8 million, or a decrease of 18.0 percent compared to the no-new-standards case value of $69.3 million.

TSL 1 represents a national standard set at 92-percent AFUE for large NWGFs and all MHGFs, while small NWGFs remain at the current Federal minimum of 80-percent AFUE. At TSL 1, small NWGFs are defined as NWGFs with input capacities of 80 kBtu/hr or lower, which accounts for approximately 58 percent of NWGF shipments. Before the standard year, approximately 52 percent of NWGF shipments and ten percent of MHGF shipments are expected to be sold at condensing levels. At TSL 1, an additional 16 percent of NWGF shipments and 90 percent of MHGF shipments will be sold at condensing levels, requiring the industry to expand its production of secondary heat exchanger. In total, 19 percent of NWGF shipments and 90 percent of MHGF shipments would need to add a secondary heat exchanger or an increase in overall heat exchanger surface area in order to meet standards at TSL 1. Manufacturers will incur $15.9 million in capital conversion costs as manufacturers increase secondary heat exchanger production line capacity. Total conversion costs are expected to be $34.1 million for the industry.

TSLs 1, 2, 4, and 6 represent national standards set at 92-percent AFUE for large NWGFs and all MHGFs, while small NWGFs remain at the current Federal minimum of 80-percent AFUE. However, the capacity threshold used to classify small NWGFs changes at each TSL. Small NWGF furnaces are defined as units having an input capacity of 70 kBtu/hr or greater at TSL 2, 60 kBtu/hr or greater at TSL 4, and 55 kBtu/hr or greater at TSL 6. As the capacity threshold decreases from 80 kBtu/hr at TSL 1 down to 55 kBtu/hr at TSL 6, the number of NWGF shipments classified as large NWGFs, and subsequently the portion of shipments that must be condensing after the standard year, increases. Capital conversion costs increase as manufacturers add additional capacity to their secondary heat exchanger production lines. Capital conversion costs scale with the increased volume of shipments that require additional heat exchanger surface area. Manufacturers would also incur product conversion costs as they invest resources to develop cost-optimized 92-percent AFUE models that are competitive at lower price points. Manufacturers are expected to incur $18.2 million in product conversion costs at TSLs 1, 2, 4 and 6.

Furthermore, with a national standard of 92-percent AFUE for large NWGFs and all MHGFs, the industry would face some compression of markups. However, DOE believes industry would still able to maintain three tiers of markups, with efficiency as one differentiating attribute, in a market where the national standard is 92-percent AFUE. DOE characterizes these markups as "good," "better," and "best," which correspond to 92-percent AFUE, 95-percent AFUE, and 98-percent AFUE, respectively.

At TSL 2, DOE estimates the change in INPV to range from −$98.5 million to −$2.7 million, or a change in INPV of −8.9 percent to −0.2 percent. At this level, free cash flow in 2021 is estimated to decrease to $52.8 million, or a decrease of 23.8 percent compared to the no-new-standards-case value of $69.3 million in the year 2021.

TSL 2 represents a national standard at 92-percent AFUE for large NWGFs and all MHGFs, while small NWGFs remain at the current federal minimum of 80-percent AFUE. Small NWGFs are defined as NWGFs with input capacities of 70 kBTU/hr or less and make up 31 percent of NWGF shipments. At TSL 2, an additional 29 percent of the NWGF market and an additional 90 percent of MHGF market moves from non-condensing to condensing efficiencies. In total, 33 percent of NWGF shipments and 90 percent of MHGF shipments would need to include secondary heat exchangers or increased overall heat exchanger surface area. Capital conversion costs increase from $15.9 million at TSL 1 to $24.8 million at TSL 2, as manufacturers increase secondary heat exchanger production line capacity. Total conversion costs are expected to be $43.0 million at TSL 2.

At TSL 3, DOE estimates the change in INPV to range from −$257.6 million to $0.3 million, or a change in INPV of −23.3 percent to an increase of less than one percent. At this level, free cash flow is estimated to decrease to $43.4 million, or a decrease of 37.4 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 3 represents a regional standard set at 95-percent AFUE for products sold in the North and 80-percent AFUE for products sold in the Rest of the Country. TSL 3 does not have a small furnace capacity threshold. At TSL 3, relative to the no-new-standards case, an additional 48 percent of NWGF shipments and 90 percent of MHGF shipments would shift to condensing levels and need a secondary heat exchanger. In total at TSL 3, 74 percent of NWGF shipments and 45 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Capital conversion costs are modeled to escalate from $24.8 million at TSL 2 to $40.1 million at TSL 3. Product conversion costs increase significantly from $18.2 million at TSLs 1 and 2 to $26.9 million at TSL 3, as manufacturers develop cost-optimized 95-percent AFUE large NWGF and MHGF models that are competitive at reduced markups. Total industry conversion costs would be expected to reach $67.0 million at TSL 3.

For products sold in the North that must achieve 95-percent AFUE, the industry faces a compression of markups that is particularly acute. Today, 95-percent AFUE products are premium offerings that can garner a significantly higher markup than baseline products. At TSL 3, 95-percent AFUE products become the minimum efficiency offering and would no longer command the same premium markups in the North. Furthermore, there is limited opportunity to differentiate product offerings based on efficiency. DOE models the industry as compressing from three tiers today (good, better, and best) to only having two tiers (good and better) of markups for products sold in the North at TSL 3.

At TSL 4, DOE estimates the change in INPV to range from −$97.4 million to $14.8 million, or a change in INPV of −8.8 percent to 1.3 percent. At this level, free cash flow is estimated to decrease to $50.7 million, or a decrease of 26.9 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 4 represents a national standard at 92-percent AFUE for large NWGFs and all MHGFs, while small NWGFs remain at the current Federal minimum of 80-percent AFUE. Small NWGFs are defined as NWGFs with input capacities of 60 kBTU/hr or less and make up 20 percent of NWGF shipments. At TSL 4, 40 percent of NWGF shipments and 90 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Capital conversion costs would increase from $24.8 million at TSL 2, the previous TSL with a national 92-percent AFUE standard and a capacity threshold for small furnaces, to $29.5 million at TSL 4 as manufacturers increase secondary heat exchanger production line capacity. Manufacturers would also incur product conversion costs driven by the development necessary to create compliant, cost-competitive products. Total industry conversion costs would be expected to reach $47.8 million at TSL 4. At 92-percent AFUE, DOE models the industry as maintaining three tiers of product in the tiered markup scenario.

At TSL 5, DOE estimates the change in INPV to range from −$119.2 million to $13.7 million, or a change in INPV of −10.8 percent to 1.2 percent. At this level, free cash flow is estimated to decrease to $44.3 million, or a decrease of 36.0 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 5 represents a national 92-percent AFUE standard where all covered NWGFs and all MHGFs are required to achieve 92-percent AFUE. TSL 5 does not have a small furnace capacity threshold. At TSL 5, 54 percent of NWGF shipments and 90 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Markups at TSL 5 are reduced, but the industry is still able to maintain three tiers of markups. Manufacturers would incur product conversion costs of $18.2 million at TSL 5, as manufacturers develop cost-optimized 92-percent AFUE large NWGF and MHGF models that are competitive at reduced markups. Capital conversion costs would total $43.7 million at TSL 5, as manufacturers add production capacity to have secondary heat exchangers for all NWGF and MHGF shipments sold into the domestic market.

TSLs 5, 7, and 9 represent national standards for all covered NWGFs and all MHGFs. In these TSLs, there is no separate standard level based on furnace input capacity. As the TSL increases from 5 to 9, the national standard increases, and DOE models a compression of markups in the tiered markup scenario. Compressed markups are significant driver of negative impacts to INPV in the tiered markup scenario.

At TSL 6, DOE estimates the change in INPV to range from −$88.0 million to $38.5 million, or a change in INPV of −8.0 percent to 3.5 percent. At this level, free cash flow is estimated to decrease to $47.6 million, or a decrease of 31.4 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 6 represents a national standard set at 92-percent AFUE for large NWGFs and all MHGFs, while small NWGFs remain at the current Federal minimum of 80-percent AFUE. Small NWGFs are defined as units with input capacities of 55 kBTU/hr or less and make up ten percent of NWGF shipments. At this level, 52 percent of NWGF shipments and 90 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Capital conversion costs would increase from $29.5 million at TSL 4, the previous TSL with a national 92-percent AFUE standard and a capacity threshold for small furnaces, to $36.5 million at TSL 6 as manufacturers increase secondary heat exchanger production line capacity. Manufacturers will also incur product conversion costs driven by the development necessary to create compliant, cost-competitive products. DOE estimates total industry conversion costs could reach $54.7 million at TSL 6. DOE expects the industry to be able to maintain three tiers of markups with efficiency as a differentiator at TSL 6.

At TSL 7, DOE estimates the change in INPV to range from −$375.2 million to $22.5 million, or a change in INPV of −34.0 percent to 2.0 percent. At this level, free cash flow is estimated to decrease to $25.1 million, or a decrease of 63.7 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 7 represents a national 95 percent AFUE standard for all covered NWGFs and all MHGFs. TSL 7 does not have a small capacity threshold. At TSL 7, 74 percent of NWGF shipments and 96 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Capital conversion costs would increase to $80.7 million at TSL 7. Total industry conversion costs could reach $107.6 million.

As 95 percent AFUE would become the baseline product efficiency, 98-percent AFUE products would become the only higher-efficiency products available on the market and manufacturers are unable to maintain three tiers of markups differentiated by efficiency. DOE models the industry as compressing from 3 tiers today (good, better, and best) to only having two tiers (good and better) at this level. Deterioration of premium markups and loss of product differentiation would have significant effects on industry profitability, and increases in industry conversion costs would be expected to result in a significant jump in INPV losses at TSL 7. Product conversion costs would total $26.9 million at TSL 7, as manufacturers develop cost-optimized 95-percent AFUE large NWGF and MHGF models that are competitive at reduced markups.

At TSL 8, DOE estimates the change in INPV to range from −$332.8 million to $42.8 million, or a change in INPV of −30.1 percent to 3.9 percent. At this level, free cash flow is estimated to decrease to $31.2 million, or a decrease of 55.0 percent compared to the no-new-standards case value of $69.3 million in the year 2021.

TSL 8 represents a national 95-percent AFUE standard for large NWGFs and all MHGFs, while small NWGFs remain at the current Federal minimum of 80-percent AFUE. At TSL 8, small NWGFs are defined as NWGFs with input capacities of 55 kBTU/hr or less and make up ten percent of NWGF shipments. At this level, 65 percent of NWGF shipments and 96 percent of MHGF shipments would need to include a secondary heat exchanger or increased overall heat exchanger surface area. Capital conversion costs would be expected to increase significantly to $67.3 million at TSL 8. Manufacturers would also incur product conversion costs, driven by the development necessary to create compliant, cost-competitive products. Total conversion costs could reach $94.2 million.

For large NWGFs, 98-percent AFUE products would become the only higher-efficiency products available on the market, and manufacturers would be unable to maintain three tiers of markups differentiated by efficiency. While manufacturers would still able to maintain three tiers of markups in the small capacity NWGF product classes, the vast majority of shipments would be sold at a reduced markup. For large NWGFs and MHGFs, DOE models the industry as compressing from 3 tiers today (good, better, and best) to two tiers (good and best). The reduction in premium product offerings and deterioration of markups coupled with increased conversion costs would be expected to result in a significant negative change in INPV at TSL 8.

At TSL 9, DOE estimates the change in INPV to range from −$577.9 million to −$4.3 million, or a change in INPV of −52.3 percent to −0.4 percent. At this level, free cash flow is estimated to decrease to −$66.0 million, or a decrease of 195.2 percent compared to the no-new-standards case value of $69.3 million in the year 2021. TSL 9 represents the max-tech standard level.

TSL 9 represents a national max-tech standard, where all product classes must achieve 98-percent AFUE. Less than 1 percent of NWGFs and MHGFs are sold at this level today. With a 98-percent AFUE standard, nearly all models must be redesigned. Manufacturers would incur $77.4 million in product conversion costs as they develop cost-optimized 98-percent AFUE large NWGF and MHGF models that are competitive with significantly reduced markups at this TSL. Manufacturers would also incur capital conversion costs of $250.4 million as manufacturers add the production capacity necessary to produce all NWGFs and MHGFs sold into the domestic market with 98-percent AFUE. Total conversion costs would be expected to reach $327.9 million for the industry.

Some manufacturers expressed great concern about the state of technology at max-tech. Specifically, those manufacturers had concerns about the ability to deliver cost-effectiveness of these products for their customers at such a high efficiency level. They also cited high conversion costs and large investment in R&D to produce all products at this level. Furthermore, manufacturers would lose efficiency as a differentiator between baseline and premium product offerings.

DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each AFUE standard TSL.

Cash-Flow Analysis Results for Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces Standby Mode and Off Mode Standards

Table V.20 and Table V.21 present the financial impacts of standby mode and off mode standards on NWGF and MHGF manufacturers. These impacts are represented by changes in INPV and free cash flow (FCF) in the year before the standard (2021) as well as by the conversion costs that DOE estimates NWGF and MHGF manufacturers would incur at each TSL. The impacts of standby mode and off mode features were analyzed for the same product classes as the amended AFUE standards, but at different efficiency levels, which correspond to a different set of technology options for reducing standby mode and off mode energy consumption. Therefore, the TSLs in the standby mode and off mode analysis do not correspond to the TSLs in the AFUE analysis.

DOE considered the impacts of standby mode and off mode features under two markup scenarios to represent the upper and lower bounds of industry impacts: (1) A preservation of gross margin percentage scenario, and (2) a per-unit preservation of operating profit scenario. The preservation of gross margin percentage scenario represents the upper bound of impacts (less severe), while the preservation of per-unit operating profit scenario represents the lower bound of impacts (more severe).

TABLE V.20—MANUFACTURER IMPACT ANALYSIS: STANDBY MODE AND OFF MODE STANDARDS RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDARDS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level		
			1	2	3
INPV	2015$ millions	1,104.3	1,104.1	1,108.5	1,110.1
Change in INPV	2015$ millions	....	(0.2)	4.1	5.7
	%	....	(0.0)	0.4	0.5
Product Conversion Costs	2015$ millions	....	1.5	1.6	2.1
FCF (2021)	2015$ millions	69.3	68.9	68.8	68.7
Change in FCF	%	....	(0.6)	(0.7)	(0.9)
Capital Conversion Costs	2015$ millions	....	....	....	....
Total Conversion Costs	2015$ millions	....	1.5	1.6	2.1

Note: Parentheses indicate negative values.

TABLE V.21—MANUFACTURER IMPACT ANALYSIS: STANDBY MODE AND OFF MODE STANDARDS RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDARDS—PER-UNIT PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level		
			1	2	3
INPV	2015$ millions	1,104.3	1,104.1	1,101.8	1,100.9
Change in INPV	2015$ millions	....	(0.2)	(2.5)	(3.4)
	%	....	(0.0)	(0.2)	(0.3)
FCF (2021)	2015$ millions	69.3	68.9	68.8	68.7
Change in FCF	%	-	(0.6)	(0.7)	(0.9)
Product Conversion Costs	2015$ millions		1.5	1.6	2.1
Capital Conversion Costs	2015$ millions	....	....	....	....
Total Conversion Costs	2015$ millions	....	1.5	1.6	2.1

Note: Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for NWGF and MHGF manufacturers to decrease by less than one percent in both markup scenarios (preservation of gross margin and per-unit preservation of operating profit). At this potential standard level, industry free cash flow is estimated to decrease by less than one percent compared to the no-new-standards case value of $69.3 million in 2021. DOE expects conversion costs for standby mode and off mode to be $1.5 million.

At TSL 2, DOE estimates impacts on INPV for NWGF and MHGF manufacturers to range from a decrease of less than one percent to an increase of less than one percent. At this potential standard level, industry free cash flow is estimated to decrease by less than one percent compared to the no-new-standards case value of $69.3 million in 2021. DOE expects conversion costs for standby mode and off mode to be $1.6 million.

At TSL 3, DOE estimates impacts on INPV for NWGF and MHGF manufacturers to range from a decrease of less than one percent to an increase of less than one percent. At this potential standard level, industry free cash flow is estimated to decrease by less than one percent compared to the no-new-standards case value of $69.3 million in 2021. DOE expects conversion costs for standby mode and off mode to be $2.1 million.

DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each standby mode and off mode TSL.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the NWGF and MHGF industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE used statistical data from the U.S. Census Bureau's 2014 Annual Survey of Manufacturers,[193] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic direct employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms throughout the analysis period. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2014 Annual Survey of Manufacturers). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating and assembling a product within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. The total direct employment impacts calculated in the GRIM are represented by changes in the total number of production workers between the no-new-standards case and the standards cases for NWGFs and MHGFs. Table V.22 shows the range of potential impacts of potential amended energy conservation standards on U.S. production workers involved in the manufacturing of NWGFs and MHGFs.

TABLE V.22—POTENTIAL CHANGES IN THE TOTAL NUMBER OF NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE PRODUCTION WORKERS IN 2022

	Trial standard level				
	No-New-Standards case	1	2	3	4
Potential Domestic Production Workers in 2022	1,709	1,709 to 1,770	1,709 to 1,799	1,709 to 1,825	1,709 to 1,867.
Potential Change in Domestic Production Workers in 2022*.		(1,709) to 61	(1,709) to 90	(1,709) to 116	(1,709) to 158.

	Trial standard level				
	5	6	7	8	9
Total Number of Domestic Production Workers in 2022 (without changes in production locations).	1,709 to 1,936	1,709 to 1,952	1,709 to 1,918	1,709 to 1,942	1,709 to 2,654.
Potential Changes in Domestic Production Workers in 2022*.	(1,709) to 227	(1,709) to 243	(1,709) to 209	(1,709) to 233	(1,709) to 945.

Note: Numbers in parentheses indicate negative values.

In the absence of amended energy conservation standards, DOE estimates that the residential furnace industry would employ 1,709 domestic production workers in 2022. The upper end of the range estimates an increase in the number of domestic workers producing NWGF and MHGF after implementation of an amended energy conservation standard at each TSL. It assumes manufacturers would continue to produce the same scope of covered products within the United States and would require some additional labor to produce more-efficient products. To establish a conservative lower bound, DOE assumes the entire industry shifts production to foreign countries. Some large manufacturers are currently producing covered products in countries with lower labor costs, and an amended standard that necessitates large increases in labor content or large expenditures to re-tool facilities could cause other manufacturers to re-evaluate production siting options.

DOE notes that its estimates of the impacts on direct employment are based on the analysis of amended AFUE energy conservation standards only. Standby mode and off mode technology options considered in the engineering analysis would result in component swaps, which would not make the product significantly more complex and would not be difficult to implement. While some product development effort would be required, DOE does not expect the standby mode and off mode standard to significantly affect the amount of labor required in production. Therefore, DOE did not conduct a quantitative domestic manufacturing employment impact analysis for the proposed standby mode and off mode standards.

These employment impact conclusions are independent of conclusions regarding indirect employment impacts in the broader United States economy, which are discussed in chapter 15 of the SNOPR TSD.

c. Impacts on Manufacturing Capacity

According to manufacturer feedback, current production facilities may not be able to accommodate a large shift to condensing NWGFs, if such shift were required by an amended energy conservation standard. However, manufacturers would be able to add capacity and adjust product designs in the five year period between the announcement year of the standard and the compliance year of the standard. DOE interviewed manufacturers representing over 50 percent of industry sales. None of the interviewed manufacturers expressed concern over the industry's ability increase the capacity of production lines that meet required efficiency levels at TSLs 1 through 8 to meet consumer demand. At TSL 9, technical uncertainty was expressed by manufacturers that do not offer 98-percent AFUE products today, as they were unsure of what production lines changes would be needed to meet an amended standard set at max-tech.

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[193] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2014) (Available at *http://www.census.gov/manufacturing/asm/index.html*).

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Specifically, DOE identified small businesses as a manufacturer subgroup that it believes could be disproportionally impacted by energy conservation standards and would require a separate analysis in the MIA. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this SNOPR as part of the Regulatory Flexibility Analysis. In summary, the Small Business Administration (SBA) defines a "small business" as having 1,250 employees or less for NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." Based on this identification, DOE found three domestic manufacturers in the industry that qualify as a small business. For a discussion of the impacts on the small business manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B of this SNOPR and chapter 12 of the SNOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE examines other regulations that could affect NWGF and MHGF manufacturers that will take effect approximately three years before or after the 2022 compliance date or during the period between publication of the amended energy conservation standards for NWGF and MHGF and when compliance with such standards is required. In interviews, manufacturers cited Federal regulations on equipment other than NWGF and MHGF that contribute to their cumulative regulatory burden. The compliance years and expected industry conversion costs of relevant energy conservation standards are presented in Table V.23.

TABLE V.23—COMPLIANCE DATES AND EXPECTED CONVERSION COSTS OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE MANUFACTURERS

Federal energy conservation standards	Number of manufacturers *	Number of manufacturers from today's rule affected **	Approximate standards year	Industry conversion costs	Industry conversion costs/revenue ***
Commercial Packaged Boilers † 81 FR 15835 (March 24, 2016).	45	2	2019	$27.5M (2014$)	2.3%
Commercial Water Heaters † 81 FR 34440 (May 31, 2016).	25	2	2019	$29.8M (2014$)	3.0%
Furnace Fans 79 FR 38129 (July 3, 2014).	38	13	2019	$40.6M (2013$)	1.6%
Residential Boilers 81 FR 2320 (January 15, 2016).	27	2	2021	$2.5M (2014$)	<1%
Central Air Conditioners and Heat Pumps † 80 FR 52206 (August 25, 2015).	30	10	2023	342.6 (2015$)	<1%
Commercial Warm Air Furnaces 81 FR 2420 (January 15, 2016).	16	8	2023	$7.5M to $22.2M (2014$).	1.7% to 5.1% ††
Small, Large, and Very Large Commercial Package Air Conditioning and Heating Equipment 81 FR 2420 (January 15, 2016).	29	9	2018 and 2023 ‡	$520.8M (2014$)	4.9%

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing NWGF and MHGF that are also listed as manufacturers in the energy conservation standard contributing to cumulative regulatory burden.

*** This column presents conversion costs as a percentage of cumulative revenue for the industry during the conversion period. The conversion period is the timeframe over which manufacturers must make conversion cost investments and lasts from the announcement year of the final rule to the year before the standards year of the final rule. This period typically ranges from 3 to 5 years, depending on the energy conservation standard.

† The final rule for this energy conservation standard has not been published. The compliance date and analysis of conversion costs have not been finalized at this time. Listed values are based on the proposed rule.

†† Low and high conversion cost scenarios were analyzed as part of this Direct Final Rule. The range of estimated conversion expenses presented here reflects those two scenarios.

‡ The direct final rule for Small, Large, and Very Large Commercial Package Air Conditioning and Heating Equipment adopts an amended standard in 2018 and a higher amended standard in 2023. The conversion costs are spread over an eight-year conversion period ending in 2022, with over eighty percent of the conversion costs occurring between 2019 and 2022.

In addition to the Federal energy conservation standards listed in Table V.23, there are multiple appliance standards in progress that do not yet have a proposed rule or final rule. The compliance date, manufacturer lists, and analysis of conversion costs are not available at this time. These appliance standards include: Commercial Industrial Fans and Blowers, Residential Clothes Dryers, Residential Water Heaters, and Room Air Conditioners.

As noted in Table V.23, DOE published a final rule for energy conservation standards for furnace fans. 79 FR 38130 (July 3, 2014). For several reasons, the furnace fan rule creates a unique cumulative regulatory burden for manufacturers of NWGFs and MHGs. First, both today's SNOPR and the energy conservation standards furnace fan final rule both directly impact the design and manufacture of NWGFs and MHGFs. The two rulemakings affect products that share a common revenue stream. Second, all NWGF and MHGF manufacturers are affected by the July 2014 furnace fan final rule. Third, these requirements have effective dates within a short period of time, 2019 for furnace fans and 2022 for NWGFs and MHGFs. Fourth, the design changes resulting from this SNOPR are additive to the design changes needed to meet the furnace fan standard. In analyzing the combined impact of the two rules, DOE expects that the full costs of each rule will be incurred, with limited opportunity for cost savings to be achieved through coordinating the expenditures of the two rules.

DOE believes that manufacturers will likely redesign NWGFs to incorporate BPM motors and multi-staging technology, and redesign MHGFs to incorporate improved PSC motors. The furnace fan rule will lead to higher production costs and may require upfront investment by NWGF and MHGF manufacturers. The production cost and conversion cost impacts from the furnace fan rule and from today's rule are cumulative. To account for this in the GRIM, DOE incorporated relevant conversion costs from the furnace fan rule that occur between 2015 and 2019. Additionally, DOE accounts for the increase in MPCs and changes in working capital when the furnace fan standards goes into effect in 2019. Additional detail is provided in chapter 12 of the TSD.

DOE requests comments on the identified regulations and their contribution to cumulative regulatory burden. Additionally, DOE requests feedback on product-specific Federal regulations that take effect between 2017 and 2025 that were not listed, including identification of the specific regulations and data quantifying the associated burdens.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended AFUE standards, as well as from each of the TSLs considered as potential standards for standby mode and off mode.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for NWGFs and MHGFs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended or new standards (2022–2051). Table V.24 presents DOE's projections of the primary and FFC national energy savings for each AFUE TSL considered for NWGFs and MHGFs. National energy savings were calculated using the approach described in section IV.H of this notice.

TABLE V.24—POTENTIAL AFUE STANDARDS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

[Quads]

Energy savings	Trial standard level								
	1	2	3	4	5	6	7	8	9
Primary energy	0.77	1.51	1.53	1.95	2.17	2.40	3.37	3.52	4.66
FFC energy	0.88	1.75	1.81	2.27	2.78	2.86	4.17	4.15	5.72

For the proposed standards (TSL 6), the FFC energy savings of 2.86 quads is the the FFC natural gas savings (5.10 quads) minus the increase in FFC energy use associated with higher electricity use due to switching to electric heating (2.24 quads).

The above results reflect the use of the default product switching trend for NWGFs (as described in section IV.F.9). DOE also conducted a sensitivity analysis that considered scenarios with lower and higher rates of product switching, as compared to the default case. The results of these alternative cases are presented in Table V.25. In the low-product-switching case, the NES for the proposed standards (TSL 6) are 4 percent higher than in the default case. In the high-product-switching case, the NES is 9 percent lower than in the default case.

TABLE V.25—POTENTIAL AFUE STANDARDS: CUMULATIVE FULL-FUEL-CYCLE NATIONAL ENERGY SAVINGS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051); PRODUCT SWITCHING SENSITIVITY ANALYSIS

[Quads]

Switching case	Trial standard level								
	1	2	3	4	5	6	7	8	9
Default	0.88	1.75	1.81	2.27	2.78	2.86	4.17	4.15	5.72
No Switching	0.99	2.12	2.35	2.78	4.89	3.95	6.65	5.49	8.59
High	0.84	1.66	1.70	2.15	2.44	2.60	3.81	3.81	5.29

TABLE V.25—POTENTIAL AFUE STANDARDS: CUMULATIVE FULL-FUEL-CYCLE NATIONAL ENERGY SAVINGS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051); PRODUCT SWITCHING SENSITIVITY ANALYSIS—Continued

[Quads]

Switching case	Trial standard level								
	1	2	3	4	5	6	7	8	9
Low	0.89	1.79	1.86	2.32	3.05	2.98	4.43	4.28	6.01

Table V.26 presents DOE's projections of the primary and FFC national energy savings for each standby mode and off mode TSL considered for NWGFs and MHGFs. National energy savings were calculated using the approach described in section IV.H of this notice.

TABLE V.26—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

[Quads]

Energy savings	Trial standard level		
	TSL 1	TSL 2	TSL 3
Primary energy	0.15	0.18	0.27
FFC energy	0.16	0.19	0.28

OMB Circular A–4[194] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[195] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to NWGFs and MHGFs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period for the AFUE TSLs are presented in Table V.27.[196] The impacts are counted over the lifetime of NWGFs and MHGFs purchased in 2022–2030.

TABLE V.27—POTENTIAL AFUE STANDARDS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES; NINE YEARS OF SHIPMENTS (2022–2030)

[Quads]

Energy savings	Trial standard level								
	1	2	3	4	5	6	7	8	9
Primary energy	0.23	0.45	0.46	0.57	0.57	0.69	0.93	1.02	1.35
FFC energy	0.27	0.52	0.56	0.68	0.77	0.83	1.18	1.22	1.69

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for NWGFs and MHGFs. In accordance with OMB's guidelines on regulatory analysis,[197] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.28 shows the consumer NPV results for AFUE standards with impacts counted over the lifetime of products purchased in 2022–2051.

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[194] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at *www.whitehouse.gov/omb/circulars_a004_a-4/*).

[195] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[196] DOE presents results based on a nine-year analytical period only for the AFUE TSLs; the percentage difference between nine-year and 30-year results for the standby mode and off mode TSLs is the same as for the AFUE TSLs.

[197] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," section E, (Sept. 17, 2003) (Available at *www.whitehouse.gov/omb/circulars_a004_a-4/*).

TABLE V.28—POTENTIAL AFUE STANDARDS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

Discount rate	Trial standard level								
	1	2	3	4	5	6	7	8	9
	(Billion 2015$)								
3 percent	6.3	12.9	15.7	17.0	23.8	21.7	31.8	29.0	39.5
7 percent	1.8	3.7	4.5	4.8	5.6	5.6	7.5	7.4	9.0

The above results reflect the use of the default product switching trend for NWGFs (as described in section IV.F.9). As previously discussed, DOE conducted a sensitivity analysis assuming higher and lower levels of product switching for NWGFs. The results of these alternative cases are presented in Table V.29Table V.25. In the low-product-switching case, the NPV for the proposed standards (TSL 6) are 5 percent higher than in the default case. In the high-product-switching case, the NPV is 9 percent lower than in the default case.

TABLE V.29—POTENTIAL AFUE STANDARDS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051); PRODUCT SWITCHING SENSITIVITY ANALYSIS (2015$)

Switching case	Trial standard levels								
	1	2	3	4	5	6	7	8	9
3-percent Discount Rate									
Default	6.3	12.9	15.7	17.0	23.8	21.7	31.8	29.0	39.5
No Switching	6.1	12.5	13.8	16.1	24.7	21.7	34.0	30.3	43.2
High	6.3	12.7	14.9	16.5	20.8	20.4	28.9	27.8	35.7
Low	6.4	13.0	16.1	17.3	26.2	22.2	34.0	29.6	41.7
7-percent Discount Rate									
Default	1.8	3.7	4.5	4.8	5.6	5.6	7.5	7.4	9.0
No Switching	1.8	3.5	4.0	4.5	6.0	5.8	8.3	8.0	10.1
High	1.8	3.5	4.2	4.5	4.5	5.1	6.4	6.9	7.6
Low	1.9	3.7	4.7	4.9	6.5	5.9	8.3	7.7	9.8

Table V.30—Potential Standby Mode and Off Mode Standards: Cumulative Net Present Value of Consumer Benefits for Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces Shipped in 2022–2051 shows the consumer NPV results for standby mode and off mode standards with impacts counted over the lifetime of products purchased in 2022–2051.

TABLE V.30—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

Discount rate	Trial standard level		
	1	2	3
	(billion 2015$)		
3 percent	2.5	2.5	4.0
7 percent	0.9	0.8	1.3

The NPV results for AFUE standards based on the aforementioned 9-year analytical period are presented in Table V.31.[198] The impacts are counted over the lifetime of products purchased in 2022–2030. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

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[198] DOE presents results based on a nine-year analytical period only for the AFUE TSLs; the percentage difference between nine-year and 30-year results for the standby mode and off mode TSLs is the same as for the AFUE TSLs.

TABLE V.31—POTENTIAL AFUE STANDARDS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES; NINE YEARS OF SHIPMENTS (2022–2030)

Discount rate	Trial standard levels								
	1	2	3	4	5	6	7	8	9
	(billion 2015$)								
3 percent	2.1	4.2	5.2	5.5	6.9	6.7	9.3	8.9	11.4
7 percent	0.8	1.6	2.0	2.1	2.2	2.4	2.9	3.1	3.4

The above results reflect the use of the default, moderately decreasing price trend to estimate the change in product price for NWGFs and MHGFs over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a constant trend and one scenario with a slightly higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the SNOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the constant price trend case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE expects that amended energy conservation standards for NWGFs and MHGFs would reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2022–2027), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the SNOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in sections III.A and IV.B of this notice, DOE has tentatively concluded that the standards proposed in this SNOPR would not lessen the utility or performance of the NWGFs and MHGFs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this SNOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule, and if so, DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Chapter 15 in the SNOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential standards for NWGFs and MHGFs is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.32 provides DOE's estimate of cumulative emissions reductions expected to result from the AFUE TSLs considered in this rulemaking. Table V.32 includes site and power sector emissions and upstream emissions. The increase in emissions of SO_2, Hg, and N_2O is due to a fraction of NWGF consumers that are projected to switch from gas furnaces to electric heat pumps and electric furnaces in response to the potential standards. Table V.33 provides DOE's estimate of cumulative emissions reductions expected to result from the standby mode and off mode TSLs considered in this rulemaking. Table V.33 includes both power sector emissions and upstream emissions. All of the emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the SNOPR TSD.

TABLE V.32—POTENTIAL AFUE STANDARDS: CUMULATIVE EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

	Trial standard level								
	1	2	3	4	5	6	7	8	9
Site and Power Sector Emissions									
CO_2 (million metric tons)	39.3	75.8	74.3	97.5	90.5	115	151	173	212
SO_2 (thousand tons)	(7.74)	(25.2)	(41.1)	(37.1)	(155)	(75.7)	(176)	(86.7)	(221)
NO_X (thousand tons)	66.9	136	144	177	251	232	359	329	486
Hg (tons)	(0.0)	(0.1)	(0.2)	(0.1)	(0.6)	(0.3)	(0.7)	(0.3)	(0.8)
CH_4 (thousand tons)	(0.1)	(1.25)	(3.04)	(2.13)	(15.3)	(6.04)	(16.4)	(6.09)	(20.1)
N_2O (thousand tons)	(0.1)	(0.3)	(0.6)	(0.4)	(2.46)	(1.06)	(2.70)	(1.14)	(3.36)
Upstream Emissions									
CO_2 (million metric tons)	6.84	14.7	16.8	19.6	35.6	27.7	47.5	37.7	63.0
SO_2 (thousand tons)	(0.1)	(0.4)	(0.6)	(0.5)	(2.43)	(1.14)	(2.73)	(1.29)	(3.43)
NO_X (thousand tons)	111	239	275	319	595	455	788	618	1,042
Hg (tons)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)	(0.01)	(0.0)	(0.0)
CH_4 (thousand tons)	669	1,451	1,678	1,939	3,668	2,783	4,841	3,764	6,400
N_2O (thousand tons)	0.01	0.01	0.001	0.01	(0.04)	(0.00)	(0.04)	0.01	(0.04)
Total FFC Emissions									
CO_2 (million metric tons)	46.1	90.5	91.1	117	126	143	198	211	275
SO_2 (thousand tons)	(7.84)	(25.6)	(41.7)	(37.6)	(157)	(76.8)	(179)	(88.0)	(225)
NO_X (thousand tons)	178	375	419	496	846	687	1,147	947	1,528
Hg (tons)	(0.03)	(0.1)	(0.2)	(0.1)	(0.6)	(0.3)	(0.7)	(0.3)	(0.8)
CH_4 (thousand tons)	669	1,450	1,675	1,937	3,653	2,777	4,825	3,758	6,380
CH_4 (million tons CO_2eq)*	18.7	40.6	46.9	54.2	102.3	77.7	135.1	105.2	178.6
N_2O (thousand tons)	(0.05)	(0.3)	(0.6)	(0.4)	(2.50)	(1.07)	(2.74)	(1.13)	(3.40)
N_2O (thousand tons CO_2eq)*	(12.6)	(71.9)	(147)	(114)	(664)	(283)	(727)	(300)	(900)

*CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
Note: Parentheses indicate negative values (an increase in emissions).

TABLE V.33—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: CUMULATIVE EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

	Trial standard level		
	1	2	3
Power Sector Emissions			
CO_2 (million metric tons)	8.58	10.3	15.4
SO_2 (thousand tons)	5.01	6.01	9.01
NO_X (thousand tons)	9.52	11.4	17.1
Hg (tons)	0.02	0.02	0.03
CH_4 (thousand tons)	0.7	0.9	1.30
N_2O (thousand tons)	0.1	0.1	0.2
Upstream Emissions			
CO_2 (million metric tons)	0.5	0.6	0.9
SO_2 (thousand tons)	0.1	0.1	0.2
NO_X (thousand tons)	7.14	8.57	12.8
Hg (tons)	0.0002	0.0002	0.0004
CH_4 (thousand tons)	39.5	47.4	71.0
N_2O (thousand tons)	0.0	0.0	0.0
Total FFC Emissions			
CO_2 (million metric tons)	9.07	10.9	16.3
SO_2 (thousand tons)	5.10	6.12	9.17
NO_X (thousand tons)	16.7	20.0	30.0
Hg (tons)	0.02	0.02	0.03
CH_4 (thousand tons)	40.2	48.2	72.3
CH_4 (thousand tons CO_2eq)*	1,126	1,351	2,025
N_2O (thousand tons)	0.1	0.1	0.2
N_2O (thousand tons CO_2eq)*	28.3	33.9	50.9

*CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this supplemental proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for NWGFs and MHGFs. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2015$) are represented by $12.4/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.6/metric ton (the average value from a distribution that uses a 3-percent discount rate), $63.2/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $118/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic, and environmental) as the projected magnitude of climate change increases.

Table V.34 presents the global value of CO_2 emissions reductions at each AFUE TSL. Table V.35 presents the global value of CO_2 emissions reductions at each standby mode and off mode TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the SNOPR TSD.

TABLE V.34—POTENTIAL AFUE STANDARDS: ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

TSL	SCC case *			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
	(million 2015$)			
Site and Power Sector Emissions				
1	239	1,156	1,862	3,524
2	453	2,208	3,564	6,734
3	464	2,229	3,582	6,806
4	580	2,831	4,572	8,634
5	497	2,514	4,092	7,678
6	671	3,302	5,342	10,071
7	856	4,264	6,918	13,014
8	1,019	4,994	8,072	15,232
9	1,226	6,062	9,816	18,499
Upstream Emissions				
1	42.0	202	325	616
2	89.4	432	696	1,317
3	105	503	808	1,535
4	119	575	927	1,752
5	218	1,049	1,690	3,198
6	168	814	1,312	2,480
7	289	1,397	2,251	4,258
8	229	1,109	1,786	3,378
9	386	1,858	2,992	5,663
Total FFC Emissions				
1	281	1,358	2,188	4,140
2	542	2,640	4,260	8,050
3	569	2,733	4,391	8,341
4	699	3,406	5,499	10,387
5	715	3,564	5,783	10,875
6	839	4,116	6,653	12,551
7	1,145	5,662	9,169	17,272
8	1,248	6,103	9,858	18,610
9	1,612	7,920	12,808	24,162

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.4, $40.6, $63.2, and $118 per metric ton (2015$). The values are for CO_2 only (*i.e.*, not CO_{2eq} of other greenhouse gases).

TABLE V.35—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051

TSL	SCC Case *			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
	(million 2015$)			
	Power Sector Emissions			
1	51.8	251	404	764
2	62.1	301	485	917
3	93.1	451	728	1,375
	Upstream Emissions			
1	2.96	14.4	23.3	44.0
2	3.56	17.3	28.0	52.8
3	5.33	26.0	42.0	79.2
	Total FFC Emissions			
1	54.7	265	428	808
2	65.7	318	513	970
3	98.4	477	770	1,454

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.4, $40.6, $63.2, and $118 per metric ton (2015$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. Consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent SCC values resulting from the interagency review process. DOE notes, however, that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced CO_2 and NO_X emissions.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for NWGFs and MHGFs. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.36 presents the cumulative present values for NO_X emissions reductions for each AFUE TSL calculated using 7-percent and 3-percent discount rates. Table V.37 presents the cumulative present values for NO_X emissions for each standby mode and off mode TSL calculated using 7-percent and 3-percent discount rates. These tables present values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.40.

TABLE V.36—POTENTIAL AFUE STANDARDS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051 *

TSL	3% Discount rate	7% Discount rate
	(million 2015$)	
	Site and Power Sector Emissions	
1	(24.5)	(9.29)
2	(78.7)	(29.6)
3	(126)	(46.8)
4	(116)	(43.3)
5	(479)	(179)
6	(235)	(87.7)
7	(545)	(203)
8	(269)	(100.5)
9	(684)	(254)
	Upstream Emissions	
1	179	62.3
2	384	133
3	456	163

TABLE V.36—POTENTIAL AFUE STANDARDS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051 *—Continued

TSL	3% Discount rate	7% Discount rate
	(million 2015$)	
4	511	177
5	958	334
6	730	252
7	1,267	440
8	990	341
9	1,685	587
Total FFC Emissions		
1	155	53.1
2	305	103
3	330	116
4	396	133
5	480	155
6	495	165
7	722	237
8	720	241
9	1,000	333

* Results are based on the low benefit-per-ton values.
Note: Parentheses indicate negative values (an increase in emissions).

TABLE V.37—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES SHIPPED IN 2022–2051 *

TSL	3% Discount rate	7% Discount rate
	(million 2015$)	
Power Sector Emissions		
1	14.9	5.1
2	17.9	6.1
3	26.8	9.1
Upstream Emissions		
1	11.2	3.7
2	13.4	4.5
3	20.1	6.7
Total FFC Emissions		
1	26.0	8.8
2	31.2	10.6
3	46.8	15.8

* Results are based on the low benefit-per-ton values.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.38 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each AFUE TSL for NWGFs and MHGFs considered in this rulemaking, at both a 7-percent and 3-percent discount rate. Table V.39 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each standby mode and off mode TSL for NWGFs and MHGFs considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.38—POTENTIAL AFUE STANDARDS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS *

TSL	Consumer NPV at 3% discount rate added with:			
	SCC case $12.4/t ton and 3% low NO_X values	SCC case $40.6/t and 3% low NO_X values	SCC case $63.2/t and 3% low NO_X values	SCC case $118/t and 3% low NO_X values
	(billion 2015$)			
1	6.78	7.86	8.69	10.6
2	13.8	15.9	17.5	21.3
3	16.6	18.7	20.4	24.4
4	18.1	20.8	22.9	27.8
5	25.0	27.8	30.1	35.1
6	23.0	26.3	28.8	34.7
7	33.7	38.2	41.7	49.8
8	30.9	35.8	39.6	48.3
9	42.1	48.4	53.3	64.6

TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC case $12.4/t and 7% low NO_X values	SCC case $40.6/t and 7% low NO_X values	SCC case $63.2/t and 7% low NO_X values	SCC case $118/t and 7% low NO_X values
	(billion 2015$)			
1	2.17	3.25	4.08	6.03
2	4.31	6.41	8.03	11.8
3	5.20	7.36	9.02	13.0
4	5.60	8.30	10.4	15.3
5	6.51	9.36	11.6	16.7
6	6.65	9.92	12.5	18.4
7	8.90	13.4	16.9	25.0
8	8.91	13.8	17.5	26.3
9	10.9	17.2	22.1	33.5

* The SCC case values represent the global SCC in 2015, in 2015$, for each case. The low NO_X value in 2022, in 2015$, is $3,814/ton in the 3-percent discount rate case and $3,476/ton in the 7-percent discount rate case. The high NO_X value in 2022, in 2015$, is $8695/ton in the 3-percent discount rate case and $7,837/ton in the 7-percent discount rate case.

TABLE V.39—POTENTIAL STANDBY MODE AND OFF MODE STANDARDS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC case $12.4/t ton and 3% low NO_X values	SCC case $40.6/t and 3% low NO_X values	SCC case $63.2/t and 3% low NO_X values	SCC case $118/t and 3% low NO_X values
	(Billion 2015$)			
1	2.60	2.81	2.97	3.35
2	2.57	2.82	3.01	3.47
3	4.11	4.49	4.78	5.46

TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC case $12.4/t and 7% Low NO_X values	SCC case $40.6/t and 7% Low NO_X values	SCC case $63.2/t and 7% Low NO_X values	SCC case $118/t and 7% Low NO_X values
	(billion 2015$)			
1	1.0	1.16	1.33	1.71
2	0.9	1.11	1.30	1.76
3	1.42	1.80	2.09	2.77

* The SCC case values represent the global SCC in 2015, in 2015$, for each case. The low NO_X value in 2022, in 2015$, is $3,814/ton in the 3-percent discount rate case and $3,476/ton in the 7-percent discount rate case. The high NO_X value in 2022, in 2015$, is $8,695/ton in the 3-percent discount rate case and $7,837/ton in the 7-percent discount rate case.

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products. The national operating cost savings are measured for the lifetime of NWGFs and MHGFs shipped in 2022–2051 and include savings that accrue from such products after 2051. The benefits associated with reduced carbon emissions achieved as a result of the proposed standards are also calculated based on the lifetime of NWGFs and MHGFs shipped between 2022 and 2051. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values for emissions in future years reflect future

CO_2-emissions impacts that continue through 2300. In addition, the CO_2 reduction is a benefit that accrues globally.

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this SNOPR, DOE considered the impacts of new and amended standards for NWGFs and MHGFs at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forgo the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the SNOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[199]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[200] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Non-Weatherized Gas Furnace and Mobile Home Gas Furnace AFUE Standards

Table V.40 and Table V.41 summarize the quantitative impacts estimated for each AFUE TSL for NWGFs and MHGFs. The national impacts are measured over the lifetime of NWGFs and MHGFs purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2022–2051). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results, and include the impacts of projected fuel switching discussed in section IV.F.9 and chapter 8 of the SNOPR TSD. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.40—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE AFUE TSLs: NATIONAL IMPACTS

	Trial standard level								
	1	2	3	4	5	6	7	8	9
Cumulative FFC Energy Savings (quads).	0.9	1.7	1.8	2.3	2.8	2.9	4.2	4.1	5.7.
NPV of Consumer Costs and Benefits (2015$ billion)									
3% discount rate	6.3	12.9	15.7	17.0	23.8	21.7	31.8	29.0	39.5.

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[199] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[200] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010). (Available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf.*)

TABLE V.40—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE AFUE TSLS: NATIONAL IMPACTS—Continued

	Trial standard level								
	1	2	3	4	5	6	7	8	9
7% discount rate	1.8	3.7	4.5	4.8	5.6	5.6	7.5	7.4	9.0.
Cumulative FFC Emissions Reduction									
CO_2 (*million metric tons*)	46.1	90.5	91.1	117	126	143	198	211	275..
SO_2 (*thousand tons*)	(7.84)	(25.6)	(41.7)	(37.6)	(157)	(76.8)	(179)	(88.0)	(225)
NO_X (*thousand tons*)	178	375	419	496	846	687	1,147	947	1,528.
Hg (*tons*)	(0.03)	(0.1)	(0.2)	(0.1)	(0.6)	(0.3)	(0.7)	(0.3)	(0.8).
CH_4 (*thousand tons*)	669	1,450	1,675	1,937	3,653	2,777	4,825	3,758	6,380.
CH_4 (*million tons CO_2eq*)*	18.7	40.6	46.9	54.2	102.3	77.7	135.1	105.2	178.6.
N_2O (*thousand tons*)	(0.05)	(0.3)	(0.6)	(0.4)	(2.50)	(1.07)	(2.74)	(1.13)	(3.40).
N_2O (*thousand tons CO_2eq*)*	(12.6)	(71.9)	(147)	(114)	(664)	(283)	(727)	(300)	(900).
Value of FFC Emissions Reduction									
CO_2 (*2015$ billion*)**	0.281 to 4.140.	0.542 to 8.050.	0.569 to 8.341.	0.699 to 10.387.	0.715 to 10.875.	0.839 to 12.551.	1.145 to 17.272.	1.248 to 18.610.	1.612 to 24.162
NO_X–3% discount rate (*2015$ million*)	154.6 to 352.5.	305.1 to 695.7.	330.4 to 753.3.	395.9 to 902.6.	479.7 to 1093.8.	495.3 to 1129.2.	722.3 to 1646.9.	720.1 to 1641.8.	1000.5 to 2281.1.
NO_X–7% discount rate (*2015$ million*)	53.1 to 119.6.	103.1 to 232.5.	115.8 to 261.0.	133.2 to 300.4.	155.2 to 350.0.	164.7 to 371.3.	236.8 to 533.9.	240.9 to 543.1.	332.9 to 750.7.

Note: Parentheses indicate negative (−) values.
* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: The standards for NWGFs and MHGFs for each TSL are as follows (and can also be found in Table V.1):
TSL 1: NWGF (80% AFUE at or below and 92% AFUE above 80 kBtu/h) and MHGF (92% AFUE);
TSL 2: NWGF (80% AFUE at or below and 92% AFUE above 70 kBtu/h) and MHGF (92% AFUE);
TSL 3: NWGF (80% AFUE in the South and 95% AFUE in the North) and MHGF (92% AFUE);
TSL 4: NWGF (80% AFUE at or below and 92% AFUE above 60 kBtu/h) and MHGF (92% AFUE);
TSL 5: NWGF and MHGF (92% AFUE);
TSL 6: NWGF (80% AFUE at or below and 92% AFUE above 55 kBtu/h) and MHGF (92% AFUE);
TSL 7: NWGF and MHGF (95% AFUE);
TSL 8: NWGF (80% AFUE at or below and 95% AFUE above 55 kBtu/h) and MHGF (95% AFUE);
TSL 9: NWGF (98% AFUE) and MHGF (96% AFUE).

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE AFUE TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	Trial standard level								
	1	2	3	4	5	6	7	8	9
Manufacturer Impacts									
Industry NPV (2015$ million) (no-new-standards case INPV = 1,104.3).	1,032 to 1,097.	1,006 to 1,102.	847 to 1,105.	1,007 to 1,119.	985 to 1,118.	1,016 to 1,143.	729 to 1,127.	772 to 1,147.	526 to 1,100.
Industry NPV (*% change*)	(6.6) to (0.7).	(8.9) to (0.2).	(23.3) to 0.0.	(8.8) to 1.3	(10.8) to 1.2.	(8.0) to 3.5	(34.0) to 2.0.	(30.1) to 3.9.	(52.3) to (0.4).
Consumer Average LCC Savings (2015$)									
Non-Weatherized Gas Furnaces	676	730	597	741	617	692	561	609	506.
Mobile Home Gas Furnaces	1,049	1,049	1,275	1,049	1,049	1,049	1,020	1,020	864.
Shipment-Weighted Average*	682	735	608	746	624	698	568	615	512.
Consumer Simple PBP (years)									
Non-Weatherized Gas Furnaces	6.1	6.0	6.4	5.9	6.4	6.1	6.5	6.2	6.9.
Mobile Home Gas Furnaces	1.7	1.7	2.3	1.7	1.7	1.7	2.7	2.7	3.1.
Shipment-Weighted Average*	6.1	5.9	6.3	5.9	6.3	6.0	6.4	6.1	6.8.
Consumer LCC Impacts: Percentage of Consumers That Experience a Net Cost									
Non-Weatherized Gas Furnaces	2.1%	4.7%	6.7%	6.6%	17.1%	11.1%	22.2%	15.2%	34.2%.
Mobile Home Gas Furnaces	8.2%	8.2%	5.0%	8.2%	8.2%	8.2%	13.8%	13.8%	25.2%.
Shipment-Weighted Average*	2.2%	4.7%	6.7%	6.6%	17.0%	11.1%	22.0%	15.2%	34.0%.

* Weighted by shares of each product class in total projected shipments in 2022.
Note: Parentheses indicate negative (−) values.
Note: The standards for NWGFs and MHGFs for each TSL are as follows (can also be found in Table V.1):
TSL 1: NWGF (80% AFUE at or below and 92% AFUE above 80 kBtu/h) and MHGF (92% AFUE);
TSL 2: NWGF (80% AFUE at or below and 92% AFUE above 70 kBtu/h) and MHGF (92% AFUE);
TSL 3: NWGF (80% AFUE in the South and 95% AFUE in the North) and MHGF (92% AFUE);
TSL 4: NWGF (80% AFUE at or below and 92% AFUE above 60 kBtu/h) and MHGF (92% AFUE);
TSL 5: NWGF and MHGF (92% AFUE);
TSL 6: NWGF (80% AFUE at or below and 92% AFUE above 55 kBtu/h) and MHGF (92% AFUE);
TSL 7: NWGF and MHGF (95% AFUE);
TSL 8: NWGF (80% AFUE at or below and 95% AFUE above 55 kBtu/h) and MHGF (95% AFUE);
TSL 9: NWGF (98% AFUE) and MHGF (96% AFUE).

DOE first considered the AFUE standards at TSL 9, which represents the max-tech efficiency levels. TSL 9 would save 5.7 quads of energy, an amount DOE considers significant. Under TSL 9, the NPV of consumer benefit would be $9.0 billion using a discount rate of 7 percent, and $39.5 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 9 are 275 Mt of CO_2, 1,528 thousand tons of NO_X, and 6,380 thousand tons of CH_4. Projected emissions show an increase of 225 thousand tons of SO_2, 3.40 thousand tons of N_2O, and 0.8 tons of Hg. The increase is due to projected switching from gas furnaces to electric heat pumps and electric furnaces under standards at TSL 9. The estimated monetary value of the CO_2 emissions reduction at TSL 9 ranges from $1.612 million to $24.162 million.

At TSL 9, the average LCC impact on affected consumers is a savings of $506 for NWGFs and $864 for MHGFs. The simple payback period is 6.9 years for NWGFs and 3.1 years for MHGFs. The fraction of consumers experiencing a net LCC cost is 33.3 percent for NWGFs and 25.2 percent for MHGFs.

At TSL 9, the projected changes in INPV range from a decrease of $577.9 million to a decrease of $4.3 million. If the larger decrease is reached, TSL 9 could result in a net loss of 52.3 percent in INPV. Industry conversion costs total $327.9 million at this TSL. In the period from 2019 to 2021, the time period with the greatest risk for negative cash-flow impacts due to impacts from the furnace fan final rule and today's proposed standard, the industry's annual cash-flow drops below zero for the entire three year period. A negative industry cash-flow suggests that some manufacturers would need to access cash reserves or raise money in the capital markets to fund operations for the year. Manufacturers that have lower cash reserves, more difficulty raising capital, or a greater portion of products that require redesign would experience more business risk than their competitors in the industry.

The Secretary tentatively concludes that at TSL 9 for NWGFs and MHGFs AFUE standards, the benefits of energy savings, positive NPV of consumer benefits at both 3-percent and 7-percent discount rates, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on a significant share of consumers, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 9 is not economically justified.

DOE then considered the AFUE standards at TSL 8. TSL 8 would save 4.15 quads of energy, an amount DOE considers significant. Under TSL 8, the NPV of consumer benefit would be $7.4 billion using a discount rate of 7 percent, and $29.0 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 8 are 211 Mt of CO_2, 947 thousand tons of NO_X, and 3,758 thousand tons of CH_4. Projected emissions show an increase of 88.0 thousand tons of SO_2, 1.13 thousand tons of N_2O, and 0.3 tons of Hg. The increase is due to projected switching from gas furnaces to electric heat pumps and electric furnaces under standards at TSL 8. The estimated monetary value of the CO_2 emissions reduction at TSL 8 ranges from $1.248 million to $18.610 million.

At TSL 8, the average LCC impact on affected consumers is a savings of $609 for NWGFs and $1,020 for MHGFs.[201] The simple payback period for affected consumers is 6.2 years for NWGFs and 2.7 years for MHGFs. The fraction of consumers experiencing a net LCC cost is 15.2 percent for NWGFs, and 13.8 percent for MHGFs.

At TSL 8, the projected changes in INPV range from a decrease of $332.8 million to an increase of $42.8 million. If the larger decrease is reached, TSL 8 could result in a net loss of 30.1 percent in INPV. Industry conversion costs total $94.2 million at TSL 8. In the period from 2019 to 2021, the time period with the greatest risk for negative cash-flow impacts due to impacts from the furnace fan final rule and this proposed standard, the industry's annual cash-flow remains positive.

The Secretary tentatively concludes that at TSL 8 for NWGFs and MHGFs AFUE standards, the benefits of energy savings, positive NPV of consumer benefits at both 3-percent and 7-percent discount rates, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and the impacts on manufacturers, including the reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 8 is not economically justified.

DOE then considered the AFUE standards at TSL 7. TSL 7 would save 4.1 quads of energy, an amount DOE considers significant. Under TSL 7, the NPV of consumer benefit would be $7.7 billion using a discount rate of 7 percent, and $32.5 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 7 are 198 Mt of CO_2, 1,147 thousand tons of NO_X, and 4,825 thousand tons of CH_4. Projected emissions show an increase of 179 thousand tons of SO_2, 2.74 thousand tons of N_2O, and 0.7 tons of Hg. The increase is due to projected switching from gas furnaces to electric heat pumps and electric furnaces under standards at TSL 7. The estimated monetary value of the CO_2 emissions reduction at TSL 7 ranges from $1.145 million to $17.272 million.

At TSL 7, the average LCC impact on affected consumers is a savings of $561 for NWGFs, and $1,020 for MHGFs. The simple payback period for affected consumers is 6.5 years for NWGFs and 2.7 years for MHGFs. The fraction of consumers experiencing a net LCC cost is 22.2 percent for NWGFs and 13.8 percent for MHGFs.

At TSL 7, the projected changes in INPV range from a decrease of $375.2 million to an increase of $22.5 million. If the larger decrease is reached, TSL 7 could result in a net loss of 34.0 percent in INPV. Industry conversion costs total $107.6 million at this TSL. In the period from 2019 to 2021, the time period with the greatest risk for negative cash-flow impacts due to impacts from the furnace fan final rule and this proposed standard, the industry's annual cash-flow remains positive.

The Secretary tentatively concludes that at TSL 7 for NWGFs and MHGFs AFUE standards, the benefits of energy savings, positive NPV of consumer benefits at both 3-percent and 7-percent discount rates, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and the impacts on manufacturers, including the reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 7 is not economically justified.

DOE then considered the AFUE standards at TSL 6. TSL 6 would save 2.8 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $5.6 billion using a discount rate of 7 percent, and $21.6 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 143 Mt of CO_2, 687 thousand tons of NO_X, and 2,777 thousand tons of CH4. Projected emissions show an increase of 76.8 thousand tons of SO_2, 1.07 thousand tons of N_2O, and 0.3 tons of Hg. The increase is due to projected switching from gas furnaces to electric heat pumps and electric furnaces under standards at TSL 6. The estimated monetary value of the CO_2 emissions reduction at TSL 6 ranges from $0.839 million to $12.551 million.

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[201] Because consumers using small NWGFs are not affected by the standard at this TSL, the results reflect only consumers using large NWGFs.

At TSL 6, the average LCC impact on affected consumers is a savings of $692 for NWGFs and $1,049 for MHGFs.[202] The simple payback period for affected consumers is 6.1 years for NWGFs, and 1.7 years for MHGFs. The fraction of consumers experiencing a net LCC cost is 11.1 percent for NWGFs and 8.2 percent for MHGFs.

At TSL 6, the projected changes in INPV ranges from a decrease of $88.0 million to an increase of $38.5 million. If the larger decrease is reached, TSL 6 could result in a net loss of 8.0 percent of INPV. Industry conversion costs total $54.7 million at this TSL. In the period from 2019 to 2021, the time period with the greatest risk for negative cash-flow impacts due to impacts from the furnace fan final rule and this proposed standard, the industry's annual cash-flow remains positive. DOE notes that there is a significant reduction in potential negative impacts to industry at TSL 6 relative to TSLs 7 through 9.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at TSL 6 for NWGFs and MHGFs AFUE standards, the benefits of energy savings, positive NPV of consumer benefits at both 3-percent and 7-percent discount rates, emission reductions, the estimated monetary value of the emissions reductions, positive average LCC savings, and favorable PBPs would outweigh the negative impacts on some consumers and on manufacturers. Accordingly, the Secretary has tentatively concluded that TSL 6 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE notes that this tentative conclusion holds regardless of whether DOE considers the environmental benefits expected to result from the proposed standards.

Therefore, based on the above considerations, DOE proposes to adopt the AFUE energy conservation standards for NWGFs and MHGFs at TSL 6. The proposed amended AFUE energy conservation standards for NWGFs and MHGFs are presented in Table V.42. However, DOE notes that TSL 4, which is the same as TSL 6 except that the small furnace threshold is at 60 kBtu/hr instead of 55 kBtu/hr, reduces the fuel switching impacts considerably relative to TSL 6 (see Table V.3), and has a significantly lower fraction of consumers who would be negatively impacted than at TSL 6 (see Table V.41). For this reason, DOE is also seriously considering TSL 4 and requests additional data and comment on the merits of adopting TSL 4 in place of TSL 6. (DOE is considering TSL 4 rather than TSL 5 because TSL 5 is the approach outlined in the March 2015 NOPR, which DOE is no longer considering for the reasons described above.)

If DOE were to conclude that the costs of TSL 6 outweighed the benefits of TSL 6, then DOE could consider factors in TSL 4 such as the national energy savings of 2.3 quads, the NPV of $4.8 to $17.0 billion, and CO_2 emission reductions of 117 million metric tons over the analysis period. Under TSL 4, NWGF consumers would experience an average life-cycle cost savings of $741, with 6.6 percent of consumers negatively impacted (3.1 percent of low-income consumers), and 4.1 percent of shipments would be impacted by product switching.

TABLE V.42—PROPOSED AMENDED AFUE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

Product class	AFUE
Non-Weatherized Gas Furnaces.	92% (≤55 kBtu/h). 80% (≤55 kBtu/h).
Mobile Home Gas Furnaces.	92%.

2. Benefits and Burdens of TSLs Considered for Non-Weatherized Gas Furnace and Mobile Home Gas Furnace Standby Mode and Off Mode Standards

Table V.43 and Table V.44 summarize the quantitative impacts estimated for each standby mode and off mode TSL for NWGFs and MHGFs. The national impacts are measured over the lifetime of NWGFs and MHGFs purchased in the 30-year period that begins in the anticipated year of compliance with new standards (2022–2051). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE TSLS: NATIONAL IMPACTS

	Trial standard level		
	1	2	3
Cumulative FFC Energy Savings (quads)	0.16	0.19	0.28.
NPV of Consumer Costs and Benefits (2015$ billion)			
3% discount rate	2.52	2.47	3.96.
7% discount rate	0.89	0.78	1.31.
Cumulative FFC Emissions Reduction			
CO_2 (*million metric tons*)	9.07	10.9	16.3.
SO_2 (*thousand tons*)	5.10	6.12	9.17.
NO_X (*thousand tons*)	16.7	20.0	30.0.
Hg (*tons*)	0.019	0.023	0.034.
CH_4 (*thousand tons*)	40.2	48.2	72.3.
CH_4(*thousand tons CO_2eq*) *	1,126	1,351	2,025.
N_2O (*thousand tons*)	0.107	0.128	0.192.

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[202] Because consumers using small NWGFs are not affected by the standard at this TSL, the results reflect only consumers using large NWGFs.

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE TSLs: NATIONAL IMPACTS—Continued

	Trial standard level		
	1	2	3
N_2O (*thousand tons CO_2eq*) *	28.3	33.9	50.9.
Value of FFC Emissions Reduction			
CO_2 (2015$ million) **	0.055 to 0.808	0.066 to 0.970	0.098 to 1.454.
NO_X—3% discount rate (2015$ million)	26.0 to 59.4	31.2 to 71.2	46.8 to 106.8.
NO_X—7% discount rate (2015$ million)	8.8 to 19.8	10.6 to 23.8	15.8 to 35.7.

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE STANDBY MODE AND OFF MODE TSLs: MANUFACTURER AND CONSUMER IMPACTS

Category	Trial standard level		
	1	2	3
Manufacturer Impacts			
Industry NPV (2015$ million) (no-new stds case INPV = 1,104.3).	1,104.1	1,101.8 to 1,108.5	1,100.9 to 1,110.1
Industry NPV *(% change)*	(0.0)	(0.3) to 0.4	(0.3) to 0.5
Consumer Average LCC Savings (2015$)			
Non-Weatherized Gas Furnaces	22	12	19
Mobile Home Gas Furnaces	21	12	19
Shipment-Weighted Average *	22	12	19
Consumer Simple PBP (*years*)			
Non-Weatherized Gas Furnaces	1.2	9.1	7.0
Mobile Home Gas Furnaces	1.2	8.9	6.9
Shipment-Weighted Average *	1.2	9.1	7.0
Consumer LCC Impacts: Percentage of Consumers that Experience a Net Cost			
Non-Weatherized Gas Furnaces	2.4	13.0	8.1%
Mobile Home Gas Furnaces	0.4	1.0	0.8%
Shipment-Weighted Average *	2.4	12.8	8.0%

* Weighted by shares of each product class in total projected shipments in 2022.
Note: Parentheses indicate negative values.

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save 0.28 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.31 billion using a discount rate of 7 percent, and $3.96 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 16.3 Mt of CO_2, 9.17 thousand tons of SO_2, 30.0 thousand tons of NO_X, 0.034 tons of Hg, 72.3 thousand tons of CH_4, and 0.192 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $0.098 million to $1.454 million.

At TSL 3, the average LCC impact on affected consumers is a savings of $19 for NWGFs and $19 for MHGFs. The simple payback period is 7.0 years for NWGFs and 6.9 years for MHGFs. The fraction of consumers experiencing a net LCC cost is 8.1 percent for NWGFs and 0.8 percent for MHGFs.

At TSL 3, INPV is projected to decrease by $0.2 million, which corresponds to a decrease of less than one percent, in both markup scenarios.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at TSL 3 for NWGFs and MHGFs standby mode and off mode standards, the benefits of energy savings, positive NPV of consumer benefits at both 3-percent and 7-percent discount rates, emission reductions, the estimated monetary value of the emissions reductions, positive average LCC savings, and favorable PBPs would outweigh the negative impacts on some consumers and on manufacturers. Accordingly, the Secretary has tentatively concluded that TSL 3 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE notes that this tentative conclusion holds regardless of whether DOE considers the environmental benefits expected to result from the proposed standards.

Therefore, based on the above considerations, DOE proposes to adopt the standby mode and off mode energy conservation standards for NWGFs and MHGFs at TSL 3. The proposed new standby mode and off mode energy conservation standards for NWGFs and MHGFs are presented in Table V.45.

TABLE V.45—PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES

Product class	$P_{S,WB}$ (watts)	$P_{W,OFF}$ (watts)
Non-Weatherized Gas Furnaces	8.5	8.5
Mobile Home Gas Furnaces	8.5	8.5

3. Summary of Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2015$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[203]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products. The national operating cost savings are measured for the lifetime of NWGFs and MHGFs shipped in 2022–2051, and include savings that accrue from such products after 2051. The benefits associated with reduced carbon emissions achieved as a result of the proposed standards are also calculated based on the lifetime of NWGFs and MHGFs shipped in 2022–2051. Because CO_2 emissions have a very long residence time in the atmosphere, the SCC values for emissions in future years reflect future CO_2-emissions impacts that continue through 2300. The CO_2 reduction is a benefit that accrues globally.

Table V.46 shows the annualized values for NWGF and MHGF AFUE standards under TSL 6, expressed in 2015$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of $40.6/metric ton in 2015 (2015$)), the estimated cost of the proposed AFUE standards for NWGFs and MHGFs is $500 million per year in increased equipment costs, while the estimated benefits are $1,138 million per year in reduced equipment operating costs, $243 million per year in CO_2 reductions, and $18.6 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $900 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.6/metric ton in 2015 (2015$), the estimated cost of the proposed AFUE standards for NWGFs and MHGFs is $504 million per year in increased equipment costs, while the estimated annual benefits are $1,785 million per year in reduced operating costs, $243 million per year in CO_2 reductions, and $29.3 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $1,553 million per year.

TABLE V.46—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE STANDARDS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE

[TSL 6]

	Discount rate (%)	Primary estimate (million 2015$/year) *	Low-net-benefits estimate (million 2015$/year) *	High-net-benefits estimate (million 2015$/year) *
Benefits				
Consumer Operating Cost Savings	7	1,138	1,007	1,353.
	3	1,785	1,548	2,157.
CO_2 Reduction (using mean SCC at 5% discount rate) **	5	69.7	62.2	80.8.
CO_2 Reduction (using mean SCC at 3% discount rate) **	3	243	217	283.
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5	360	320	418.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3	742	661	862.
NO_X Reduction †	7	18.6	16.8	47.9.
	3	29.3	26.3	76.8.
Total Benefits †	7 plus CO_2 range	1,226 to 1,899	1,086 to 1,684	1,482 to 2,263.
	7	1,400	1,240	1,684.
	3 plus CO_2 range	1,884 to 2,557	1,636 to 2,235	2,315 to 3,096.
	3	2,058	1,791	2,517.
Costs				
Consumer Incremental Installed Costs	7	500	554	452.
	3	504	559	460.
Net Benefits				
Total †	7 plus CO_2 range	726 to 1,399	531 to 1,130	1,030 to 1,811.
	7	900	686	1,232.
	3 plus CO_2 range	1,380 to 2,052	1,077 to 1,676	1,855 to 2,637.

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[203] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2016, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2016. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE V.46—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE STANDARDS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE—Continued

[TSL 6]

	Discount rate (%)	Primary estimate (million 2015$/year) *	Low-net-benefits estimate (million 2015$/year) *	High-net-benefits estimate (million 2015$/year) *
	3	1,553	1,231	2,057.

* This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051.The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low-Economic-Growth case, and High-Economic-Growth case, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a constant price trend in the Low-Net-Benefits Estimate, and a high decline rate for projected product price trends in the High-Net-Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using four different sets of SCC values. The first three use the average SCC calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled "7 percent plus CO_2 range" and "3 percent plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

Table V.47 presents the annualized values for NWGF and MHGF standby mode and off mode standards under TSL 3, expressed in 2015$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of $40.6/metric ton in 2015 (2015$)), the estimated cost of the proposed standby mode and off mode standards for NWGFs and MHGFs is $40.7 million per year in increased equipment costs, while the estimated benefits are $188 million per year in reduced equipment operating costs, $28.2 million per year in CO_2 reductions, and $1.79 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $178 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.6/metric ton in 2015 (2015$), the estimated cost of the proposed standby mode and off mode standards for NWGFs and MHGFs is $41.4 million per year in increased equipment costs, while the estimated annual benefits are $276 million per year in reduced operating costs, $28.2 million per year in CO_2 reductions, and $2.77 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $265 million per year.

TABLE V.47—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE STANDARDS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE (TSL 3)

	Discount rate %	Primary estimate (million 2015$/year) *	Low-net-benefits estimate (million 2015$/year) *	High-net-benefits estimate (million 2015$/year) *
		Benefits		
Consumer Operating Cost Savings	7	188	169	219.
	3	276	246	329.
CO_2 Reduction (using mean SCC at 5% discount rate) **	5	8.2	7.4	9.2.
CO_2 Reduction (using mean SCC at 3% discount rate) **	3	28.2	25.5	31.8.
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5	41.6	37.6	46.9.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3	86.0	77.8	96.9.
NO_X Reduction†	7	1.8	1.6	4.5.
	3	2.8	2.5	7.1.
Total Benefits †	7 plus CO_2 range	198 to 276	178 to 249	233 to 321.
	7	218	197	255.
	3 plus CO_2 range	287 to 365	256 to 326	345 to 433.
	3	307	274	368.
		Costs		
Consumer Incremental Installed Costs	7	40.7	37.2	45.4.
	3	41.4	37.5	46.5.

TABLE V.47—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE STANDARDS FOR NON-WEATHERIZED GAS FURNACE AND MOBILE HOME GAS FURNACE (TSL 3)—Continued

	Discount rate %	Primary estimate (million 2015$/year) *	Low-net-benefits estimate (million 2015$/year) *	High-net-benefits estimate (million 2015$/year) *
		Net Benefits		
Total †	7 plus CO_2 range	157 to 235	141 to 212	187 to 275.
	7	178	159	210.
	3 plus CO_2 range	245 to 323	218 to 288	298 to 386.
	3	265	236	321.

* This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051.The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low-Economic-Growth case, and High-Economic-Growth case, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a constant price trend in the Low-Net-Benefits Estimate, and a high decline rate for projected product price trends in the High-Net-Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 reduction benefits are calculated using four different sets of SCC values. The first three use the average SCC calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled "7 percent plus CO_2 range" and "3 percent plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

To provide a complete picture of the overall impacts of this SNOPR, the following combines and summarizes the benefits and costs for both the amended AFUE standards and the new standby mode and off mode standards for NWGFs and MHGFs. Table V.48 shows the combined annualized benefit and cost values for the proposed AFUE standards and the standby mode and off mode standards for NWGFs and MHGFs.[204] The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.6/metric ton in 2015 (2015$)), the estimated cost of the NWGFs and MHGFs standards proposed in this rule is $541 million per year in increased equipment costs, while the estimated benefits are $1,326 million per year in reduced equipment operating costs, $272 million per year in CO_2 reductions, and $20 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $1,077 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.6/metric ton in 2015 (2015$), the estimated cost of the proposed NWGFs and MHGFs standards is $546 million per year in increased equipment costs, while the estimated benefits are $2,061 million per year in reduced operating costs, $272 million per year in CO_2 reductions, and $32 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $1,819 million per year.

TABLE V.48—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE (TSL 6) AND STANDBY MODE AND OFF MODE (TSL 3) ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES *

	Discount rate (%)	Primary estimate (million 2015$/year)	Low-net-benefits estimate (million 2015$/year)	High-net-benefits estimate (million 2015$/year)
		Benefits		
Consumer Operating Cost Savings	7	1326	1176	1572.
	3	2061	1794	2486.
CO_2 Reduction (using mean SCC at 5% discount rate) **	5	78	70	90.
CO_2 Reduction (using mean SCC at 3% discount rate) **	3	272	242	315.
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5	401	358	465.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3	828	739	959.
NO_X Reduction †	7	20	18	52.

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[204] To obtain the combined results, DOE added the results for the AFUE standards in Table V.46 with the results for the standby mode and off mode standards in Table V.47.

TABLE V.48—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE (TSL 6) AND STANDBY MODE AND OFF MODE (TSL 3) ENERGY CONSERVATION STANDARDS FOR NON-WEATHERIZED GAS FURNACES AND MOBILE HOME GAS FURNACES *—Continued

	Discount rate (%)	Primary estimate (million 2015$/year)	Low-net-benefits estimate (million 2015$/year)	High-net-benefits estimate (million 2015$/year)
	3	32	29	84.
Total Benefits dagger;	7 plus CO_2 range	1424 to 2175	1264 to 1933	1715 to 2584.
	7	1618	1437	1939.
	3 plus CO_2 range	2171 to 2921	1892 to 2561	2660 to 3529.
	3	2364	2065	2884.
	Costs			
Consumer Incremental Product Costs	7	541	592	497.
	3	546	597	506.
	Net Benefits			
Total †	7 plus CO_2 range	884 to 1634	673 to 1342	1217 to 2086.
	7	1077	845	1442.
	3 plus CO_2 range	1625 to 2375	1295 to 1964	2154 to 3023.
	3	1819	1468	2378

[*] This table presents the annualized costs and benefits associated with NWGFs and MHGFs shipped in 2022–2051. These results include benefits to consumers which accrue after 2051 from the products shipped in 2022–2051. The incremental installed costs include incremental equipment cost as well as installation costs. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The CO_2 reduction benefits are global benefits due to actions that occur domestically. The Primary, Low-Net-Benefits, and High-Net-Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low-Economic-Growth case, and High-Economic-Growth case, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a constant price trend in the Low-Net-Benefits Estimate, and a high decline rate for projected product price trends in the High-Net-Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

[**] The CO_2 reduction benefits are calculated using four different sets of SCC values. The first three use the average SCC calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The fourth represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The SCC values are emission year specific. See section IV.L.1 for more details.

[†] DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For the Primary Estimate and Low-Net-Benefits Estimate, DOE used national benefit-per-ton estimates for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.* 2009). For the High-Net-Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2011); these are nearly two-and-a-half times larger than those from the ACS study.

[††] Total Benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled "7 percent plus CO_2 range" and "3 percent plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this SNOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an "economically" significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this SNOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of NWGFs and MHGFs, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121.[205] Manufacturing of NWGFs and MHGFs is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered and Legal Basis

Amendments to EPCA in the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) established EPCA's original energy conservation standards for furnaces, consisting of the minimum AFUE levels described above for mobile home furnaces and for all other furnaces except "small" gas furnaces. (42 U.S.C. 6295(f)(1)–(2)) Pursuant to 42 U.S.C. 6295(f)(1)(B), in November 1989, DOE adopted a mandatory minimum AFUE level for "small" furnaces. 54 FR 47916 (Nov. 17, 1989). The standards established by NAECA and the November 1989 final rule for "small" gas furnaces are still in effect for mobile home oil-fired furnaces, weatherized oil-fired furnaces, and electric furnaces.

Under EPCA, DOE was required to conduct two rounds of rulemaking to consider amended energy conservation standards for furnaces. (42 U.S.C. 6295(f)(4)(B) and (C)) In satisfaction of this first round of amended standards rulemaking under 42 U.S.C. 6295(f)(4)(B), as noted above, DOE published a final rule in the **Federal Register** on November 19, 2007 that revised these standards for most furnaces, but left them in place for two product classes (*i.e.,* mobile home oil-fired furnaces and weatherized oil-fired furnaces). The standards amended in the November 2007 Rule were to apply to furnaces manufactured or imported on and after November 19, 2015. 72 FR 65136. The energy conservation standards in the November 2007 final rule consist of a minimum AFUE level for each of the six classes of furnaces. *Id.* at 65169. As previously noted, based on the market analysis for the November 2007 final rule and the standards established under that rule, the November 2007 final rule eliminated the distinction between furnaces based on their certified input capacity, *i.e.,* the standards applicable to "small' furnaces were established at the same level as the corresponding class of furnace generally.

Following DOE's adoption of the November 2007 final rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (Second Circuit), seeking to invalidate the rule. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. filed Jan. 17, 2008). The petitioners asserted that the standards for residential furnaces promulgated in the November 2007 Rule did not reflect the "maximum improvement in energy efficiency" that "is technologically feasible and economically justified" under 42 U.S.C. 6295(o)(2)(A). On April 16, 2009, DOE filed with the Court a motion for voluntary remand that the petitioners did not oppose. The motion did not state that the November 2007 rule would be vacated, but indicated that DOE would revisit its initial conclusions outlined in the November 2007 Rule in a subsequent rulemaking action. DOE also agreed that the final rule would address both regional standards for furnaces, as well as the effects of alternate standards on natural gas prices. The Second Circuit granted DOE's motion on April 21, 2009.

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[205] The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

On June 27, 2011, DOE published a direct final rule (June 2011 DFR) revising the energy conservation standards for residential furnaces pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.* 76 FR 37408. In the June 2011 DFR, DOE considered the amendment of the same six product classes considered in the November 2007 final rule analysis plus electric furnaces. The June 2011 DFR amended the existing energy conservation standards for NWGFs, MHGFs, and non-weatherized oil furnaces, and amended the compliance date (but left the existing standards in place) for weatherized gas furnaces. The June 2011 DFR also established electrical standby mode and off mode standards for NWGFs, non-weatherized oil furnaces, and electric furnaces. DOE confirmed the standards and compliance dates promulgated in the June 2011 final rule in a notice of effective date and compliance dates published on October 31, 2011. 76 FR 67037.

As noted earlier, following DOE's adoption of the June 2011 DFR, APGA filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit, seeking to invalidate the DOE rule as it pertained to NWGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.*, No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). On April 24, 2014, the Court granted a motion that vacated in part, DOE's rule and remanded the matter, consistent with a settlement agreement reached between DOE, APGA, and the various intervenors in the case, in which DOE agreed to a remand of the NWGFs and MHGFs portions of the June 2011 direct final rule in order to conduct further notice-and-comment rulemaking. Accordingly, the Court's order vacated the June 2011 DFR in part (*i.e.*, those portions relating to NWGFs and MHGFs) and remanded to the agency for further rulemaking. As part of the settlement, DOE agreed to use best efforts to issue a notice of proposed rulemaking within one year of the remand, and to issue a final rule within the later of two years of the issuance of remand, or one year of the issuance of the proposed rule, including at least a ninety-day public comment period.

2. Description and Estimated Number of Small Entities Regulated

DOE reviewed the proposed energy conservation standards for NWGFs and MHGFs considered in this SNOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market survey using available public information to identify potential domestic small manufacturers. DOE's research involved DOE's Compliance Certification Database,[206] industry trade association membership directories (including AHRI),[207] individual company Web sites, and market research tools (*e.g.*, Hoovers reports)[208] to create a list of companies that manufacture or sell the NWGF and MHGF products covered by this rulemaking. DOE also asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews. DOE reviewed publicly available data and contacted domestic companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered NWGF and MHGF products. DOE screened out companies that do not meet the definition of a "small business" or are completely foreign-owned and operated. DOE initially identified a total of 13 potential companies that sell NWGFs and MHGFs in the United States. After reviewing publicly available information on these potential residential furnace businesses, DOE determined that 10 were either large businesses or businesses that were completely foreign owned and operated. DOE determined that the remaining three companies were small businesses that manufacturer NWGFs or MHGFs in the United States.

Before issuing this SNOPR, DOE attempted to contact all the small domestic business manufacturers of NWGFs and MHGFs it had identified. None of the small businesses consented to formal MIA interviews. DOE also attempted to obtain information about small business impacts while interviewing large manufacturers.

3. Description and Estimate of Compliance Requirements

a. Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces AFUE Standards

Of the three small domestic manufacturers identified, one small business manufactures only NWGFs, one small business only manufacturers MHGFs, and one small business manufactures NWGFs and MHGFs. DOE made several key assumptions to estimate the conversion costs for small NWGF and MHGF manufacturers. First, DOE assumed capital conversion costs are proportionate with sales volume. Using model listings as a proxy for market share, DOE scaled industry capital conversion costs down to a small manufacturer level based on percentage of industry model listings. Second, DOE assumed that product conversion costs are proportionate to the number of models requiring redesign and that manufacturers would redesign all failing models. DOE scaled industry product conversion costs down to small manufacturer level based on percentage of failing models. Additionally, DOE obtained company revenue information pulled from the business information databases Hoovers[209] and Glassdoor.[210] Relying on these assumptions and information, DOE estimated the conversion costs relative to small manufacturer revenue.

The small domestic manufacturer that manufactures both NWGFs and MHGFs accounts for just under one percent of all NWGF listings and approximately four percent of all MHGF listings in the DOE Certification Compliance Database. This small manufacturer has condensing furnace product offerings, with 93 percent of its NWGF models and 71 percent of its MHGF models meeting the 92-percent AFUE standard at TSL 6. DOE estimates that conversion costs incurred to comply with the AFUE standard at TSL 6 would account for 0.1 percent of revenues over the 5-year conversion period for this company.

The small domestic manufacturer that only manufactures NWGFs accounts for five percent of the listings in the DOE Certification Compliance Database. This domestic small manufacturer has condensing NWGF offerings, with 22 percent of its models meeting the proposed 92-percent AFUE standard for large NWGFs at TSL 6. DOE estimates that conversion costs incurred to comply with the AFUE standard at TSL 6 would account for 2.8 percent of revenues over the 5-year conversion period for this company.

The small domestic manufacturer that only manufactures MHGFs accounts for approximately 17 percent of listings in the DOE Certification Compliance Database. This domestic small manufacturer does not offer condensing MHGFs, and none of their products would meet the proposed standard. DOE estimates that conversion costs incurred to comply with the AFUE standard at TSL 6 would account for 0.5 percent of revenues over the 5-year conversion period for this company.

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[206] DOE's Compliance Certification Management System, *http://www.regulations.doe.gov/certification-data/*(last accessed Aug. 19, 2014).

[207] AHRI Directory, *https://www.ahridirectory.org/ahridirectory/pages/home.aspx* (last accessed Aug. 19, 2014).

[208] Hoovers | Company Information | Industry Information | Lists, *http://www.hoovers.com/*) (last accessed Aug 26, 2014).

[209] *www.hoovers.com.*

[210] *www.glassdoor.com.*

b. Weatherized Gas Furnaces and Mobile Home Gas Furnaces Standby Mode and Off Mode Standards

The engineering analysis suggests that the design paths required to meet the standby mode and off mode requirements consist of relatively straight-forward component swaps. Additionally, the INPV and short-term cash flow impacts of the standby mode and off mode requirements are dwarfed by the impacts of the AFUE standard. In general, the impacts of the standby and off mode standard are significantly smaller than the impacts of the AFUE standard. For this reason, the IRFA focuses on the impacts of the AFUE standard.

DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by product class. DOE also requests comment on its assumptions that capital conversion costs for small businesses scale with shipment volumes, the assumption that product conversion costs scale with models that require redesign, and the assumption that small manufacturers would redesign all failing models to meet the new standard. Lastly, DOE requests comment on the potential impacts of the proposed AFUE standards and standby mode and off mode standards on small manufacturers.

4. Identification of Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule.

5. A Description of Significant Alternatives to the Rule

The discussion in section Table VI.1 analyzes impacts on small businesses that would result from DOE's proposed rule. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at higher and lower efficiency levels; TSL 9, TSL 8, TSL 7, TSL 5, TSL 4, TSL 3, TSL 2 and TSL 1. Table V.14 presents a comparison of the net present value (NPV) of consumer benefits, energy savings, carbon dioxide emissions, and small business conversion costs between the proposed standard, TSL 6, and each of the analyzed TSLs. The differences between the analyzed TSL and the proposed TSL are characterized as percentages.

TABLE VI.1—SIGNIFICANT ALTERNATIVES TO TSL 6

		Trial standard level								
		1	2	3	4	5	6	7	8	9
NPV of Consumer Costs and Benefits.	3% discount rate (2015$ billion).	6.3	12.9	16.1	17	23.8	**21.6**	32.5	28.9	39.5
	difference from TSL 6.	(15.3)	(8.7)	(5.5)	(4.6)	2.2	....	10.9	7.3	17.9
	7% discount rate (2015$ billion).	1.8	3.7	4.6	4.8	5.6	**5.6**	7.7	7.4	9
	difference from TSL 6.	(3.8)	(1.9)	(1.0)	(0.8)	0.0	....	2.1	1.8	3.4
Cumulative FFC Energy Savings.	Quads	0.9	1.7	1.7	2.3	2.8	**2.9**	4	4.2	5.7
	difference from TSL 6.	(2.0)	(1.2)	(1.2)	(0.6)	(0.1)		1.1	1.3	2.8
Carbon Dioxide Emissions Savings.	million metric tons.	46.1	90.5	86.1	117	126	**143**	187	211	275
	% change from TSL 6.	(96.9)	(52.5)	(56.9)	(26.0)	(17.0)		44.0	68.0	132.0
Average Small business Conversion Costs.	(2015$ millions).	0.6	0.6	1	0.6	0.6	**0.6**	1	1	3
	difference from TSL 6.	0.0	0.0	0.4	0.0	0.0		0.4	0.4	2.4

* Parentheses indicate negative values.

DOE considered TSL 7 through 9. The manufacturer impact analysis for the rule showed significantly higher burden for industry at these levels than at the proposed level. Furthermore, these levels would have required a greater upfront investment from small manufacturers to update product designs and production lines to comply with an amended standard.

DOE also considered TSLs 1 through 4. However, each of these standard levels would have resulted in lower energy savings, fewer consumer benefits, or high upfront investments from manufacturers. DOE believes that establishing standards at TSL 6 balances the benefits of the energy savings created at TSL 6 with the potential burdens placed on NWGF and MHGF manufacturers, including small businesses. Accordingly, DOE is declining to adopt one of the other TSLs, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of the SNOPR TSD.

Additional compliance flexibilities may be available through other means. For example, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standards. (42 U.S.C. 6295(t)) Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of NWGFs and MHGFs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for NWGFs and MHGFs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including NWGFs and MHGFs. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx/*.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

Although this supplemental proposed rule, which proposes amended energy conservation standards for residential furnaces, does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) Investment in research and development and in capital expenditures by NWGF and MHGF manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency NWGFs and MHGFs, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this SNOPR and the TSD for this supplementary proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), this proposed rule would establish amended AFUE energy conservation standards and new standby mode and off mode energy conservation standards for NWGFs and MHGFs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this SNOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended AFUE energy conservation standards and new standby mode and off mode energy conservation standards for NWGFs and MHGFs, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the analyses underlying the energy conservation standards rulemaking are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id.* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a Peer Review Report that describes that peer review.[211] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present NWGFs and MHGFs rulemaking.

This peer review covered the basic analytical methods and models that DOE has used in the present NWGFs and MHGFs rulemaking. In addition, prior to the publication of the March 2015 NOPR, DOE provided a number of opportunities for stakeholders to understand and review the analytical tools used in the NWGFs and MHGFs rulemaking. Table VI.2 provides a complete listing of interactions with stakeholders related to DOE's analysis in the present rulemaking. The paragraphs below describe several key opportunities for discussion and review of DOE's analysis.

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[211] The 2007 "Energy Conservation Standards Rulemaking Peer Review Report" is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

On November 13–14, 2012, DOE had interactions with representatives of the Gas Technology Institute (GTI) to describe and discuss the LCC and PBP analysis methodology and the details of implementation of the method in the LCC and PBP analysis spreadsheet. The meeting focused on key parts of the analysis, including the furnace installation model, energy prices, furnace lifetime, and product switching in response to standards, and also on the need for data to improve these aspects of the analysis. GTI subsequently developed and conducted a survey of furnace contractors and homebuilders to gain insight into product switching. The results of this survey were used by DOE in its analysis for the March 2015 NOPR (see appendix 8J of the NOPR TSD). GTI also provided energy price data, which DOE subsequently used to validate its marginal price methodology (see appendix 8C of the NOPR TSD).

On November 7, 2014, DOE held a public meeting and webinar to discuss the analytical tools and the data gathered and analyzed by the agency in support of the proposed rule. The meeting covered the LCC and PBP analysis spreadsheet, the NIA spreadsheet, and the MIA spreadsheet (described in section IV of this preamble). The information presented at the meeting, which included explanations in response to questions, facilitated subsequent detailed review of the analytical tools and data by several stakeholders. Based on their reviews of and comments on the analytical tools and input assumptions that formed the basis of the the March 2015 NOPR, DOE refined its analyses and included these updates in the September 2015 NODA, which evaluated the potential impacts of creating a separate product class for furnaces based on input capacity and setting lower standards for the "small furnaces" product class. AHRI also provided updated shipments data for non-condensing and condensing furnaces, which were used by DOE in the analysis supporting the NODA and also the current SNOPR (see appendix 8J of the SNOPR TSD).

Finally, stakeholders provided further review of the analysis tools and data through comments on the September 2015 NODA. Among other topics, the comments covered the methodology for furnace sizing and the potential for downsizing of new furnaces in response to a small furnace standard. DOE considered these comments, along with the comments on the March 2015 NOPR, in preparation of this SNOPR (see chapter 8 of the SNOPR TSD).

As such, DOE's analysis, including the product switching analysis that is central to this rulemaking and was not included in the 2007 Peer Review Report, is not entirely inconsistent with the transparency and reproducibility requirements of OMB's government-wide Information Quality Guidelines, including pre-dissemination review requirements. Specifically, we encourage readers to look at section IV.F.9 of this preamble for a discussion of the key assumptions underlying the product switching model and the sensitivity analyses undertaken in order to characterize the uncertainty inherent in the product switching analysis, and at section V.B.1.a, V.B.3.a, and V.B.3.b for discussion of the sensitivity of the results to assumptions about product switching behavior.

TABLE VI.2—RECORD OF INTERACTIONS WITH STAKEHOLDERS IN RESIDENTIAL FURNACES RULEMAKING

Document name	Date	Notes	Link
Ex Parte Meeting Record	09/12/14	Meeting between AGA and DOE to discuss fuel switching impact model.	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0004.*
Preliminary Spreadsheets	09/22/14	Various preliminary spreadsheets DOE put out for stakeholders prior to issuance of the NOPR.	LCC: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0002.* GRIM: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0006.* NIA: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0005.*
AGA Workshop on Condensing v. Noncondensing Appliances.	10/9/14	AGA workshop held for stakeholders to discuss DOE's furnace rule.	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0010.*
AGA Marginal Cost & Fuel Switching Analysis.	10/21/14	Posted after AGA workshop; independent AGA analysis.	Marginal Cost Analysis: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0012.* Fuel Switching Analysis: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0013.*
GTI Fuel Switching Analysis	10/21/14	Independent GTI analysis	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0011.*
Ex Parte Meeting Record	10/23/14	Meeting between AGA, APGA, GTI, and DOE to discuss fuel switching.	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0014.*
Notice of Public Meeting	10/30/14	Notice for meeting to discuss DOE's analytical tools.	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0015.*
Public Meeting	11/07/14	Public meeting where DOE discussed analytical tools.	Presentation Slides: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0016.* Attendance List: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0139.* Transcript: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0017.*
Correspondence between APGA and DOE Counsel.	11/14/14	DOE answers to APGA follow-up questions from the Nov. 7, 2014 public meeting.	APGA Request: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0029.* DOE Response: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0030.*

TABLE VI.2—RECORD OF INTERACTIONS WITH STAKEHOLDERS IN RESIDENTIAL FURNACES RULEMAKING—Continued

Document name	Date	Notes	Link
NOPR Spreadsheets	02/05/15, 02/11/15	DOE spreadsheets revised for NOPR; put out ahead of NOPR issuance.	NIA+Standby: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0024.* Inputs: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0020.* NIA: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0022.* NIA+Standby (revised 2/10): *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0023.* GRIM: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0019.* LCC & PBP: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0021.*
Summary of Changes to Analytical Tools.	02/12/15 & 02/24/15	Summarizes changes DOE made to analytical tools in light of meetings.	February 12: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0025.* February 24: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0026.*
NOPR Public Meeting	03/27/15	Public meeting to discuss March 2015 NOPR.	Slides: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0042.* Attendance record: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0048.* Transcript: *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0044.*
Correspondence between DOE and APGA/AGA.	04/23/15	DOE answers to questions from APGA/AGA on shipments data presented at the NOPR public meeting.	*https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0046.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards Staff at (202) 586–6636 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=59.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE's weighing of the benefits and burdens of the small NWGF product class approach and whether a cut-off of 60 kBtu/h (or other capacity) would be more appropriate than 55 kBtu/h, particularly in light of the consumer economic benefits of such a product class (see section III.A).

2. The technological feasibility of using BPM control relays to reduce the energy consumption of furnaces in standby/off mode. In particular, DOE seeks feedback regarding the energy savings benefits of this technology option, as well as potential impacts on the reliability and lifetime of furnace components (see section IV.A.2).

3. The appropriateness of treating standby and off mode energy consumption as equal (see section IV.C.1.a).

4. Potential future furnace functions that would operate in standby/off mode, as well as the energy consumption level of furnaces incorporating such functions in relation to the baseline standby/off mode energy consumption level used in the analyses for this SNOPR (see section IV.C.1.a).

5. Furnace design changes which may be required in order to accommodate the implementation of LL–LTX as a technology option for reducing the energy consumption of furnaces in standby/off mode (see section IV.C.1.b).

6. The technological feasibility of achieving the proposed standby/off mode max-tech efficiency level of 8.5 watts (see section IV.C.1.b).

7. The anticipated percentage of NWGF models which could achieve the efficiency levels promulgated by the 2014 furnace fans rule via implementation of a constant-torque BPM motor paired with single-stage combustion, rather than being paired with two-stage combustion (see section IV.C.2.c).

8. The MPCs and incremental MPCs developed for the AFUE efficiency levels analyzed in this SNOPR (see section IV.C.2.c).

9. The electric furnace MPC estimates and methodology (see section IV.C.3).

10. The installation costs for condensing NWGFs and MHGFs. Specifically, the estimated fraction of houses that would see a large impact for installing a condensing furnace because of venting and/or condensate withdrawal issues (see section IV.F.2).

11. The costs associated with modifying the existing vent systems and managing condensate withdrawal to accommodate condensing gas furnaces in multi-family buildings (see section IV.F.2).

12. DOE's approach for sizing furnace equipment (see section IV.E.1.a).

13. DOE's approach for furnace downsizing in the standards cases with a small furnace standard (see section IV.E.1.a).

14. The reasonableness of its assumption to apply a decreasing trend to the manufacturer selling price (in real dollars) of NWGFs and MHGFs, as well as any information that would support the use of alternative assumptions (see section IV.F.1).

15. DOE's approach for determining discount rates in the LCC analysis (see section IV.F.7).

16. DOE's approach for determining NWGF and MHGF lifetime distribution (see section IV.F.6).

17. DOE's current approach for calculating the fraction of NWGF consumers that would be expected to switch to other products in the standards cases (see section IV.F.9).

18. The estimated market share of condensing NWGFs and MHGFs in 2022 in the absence of amended AFUE energy conservation standards (see section IV.F.8).

19. The estimated market share of NWGFs and MHGFs that are used at each standby efficiency level in 2022 in the absence of amended energy conservation standards (see section IV.F.8).

20. The methodology and data sources used for projecting the future shipments of NWGFs and MHGFs in the absence of amended energy conservation standards (see section IV.G).

21. The potential impacts on product shipments related to fuel and product switching (see section IV.G.2).

22. The reasonableness of the value that DOE used to characterize the rebound effect with higher-efficiency NWGFs and MHGFs (see section IV.E.1.d).

23. The approach for conducting the emissions analysis for NWGFs and MHGFs (see section IV.K).

24. DOE's approach for estimating monetary benefits associated with emissions reductions (see section IV.L).

25. DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each AFUE standard TSL. (See section V.B.2.a)

26. DOE requests comments on the identified regulations and their contribution to cumulative regulatory burden. Additionally, DOE requests feedback on product-specific Federal regulations that take effect between 2017 and 2025 that were not listed, including identification of the specific regulations and data quantifying the associated burdens. (See section V.B.2.e) DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their role in the market. DOE also requests data on the market share of small manufacturers in the NWGF and MHGF markets and information on the conversion costs small manufacturers expect to invest.

27. DOE requests comment on the potential impacts of the proposed AFUE standards and standby mode and off mode standards on small manufacturers (see section VI.B).

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on September 2, 2016.

David J. Friedman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.18 is amended by revising paragraphs (a)(2)(vii) and (b)(2)(i) to read as follows:

§ 429.18 Residential furnaces.

(a) * * *

(2) * * *

(vii) *Reported Values.* The represented value of annual fuel utilization efficiency must be truncated to the one-tenth of a percentage point and the representative value of standby and off mode electrical power consumption must be rounded up to the next tenth of one watt.

(b) * * *

(2) * * *

(i) Residential furnaces and boilers: The annual fuel utilization efficiency (AFUE) in percent (%) and the input capacity (nameplate maximum fuel input rate) in British thermal units per hour (Btu/h). For non-weatherized oil-fired furnaces (including mobile home oil furnaces) and electric furnaces, the standby and off mode electrical power consumption in watts (W). On or after [*date 5 years after the publication of the final rule*], certification reports for non-weatherized gas furnaces (including mobile home gas furnaces) must also include the standby and off mode electrical power consumption in watts (W).

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.32 is amended by:
■ a. Revising paragraph (e)(1)(ii);
■ b. Redesignating paragraph (e)(1)(iii) as (e)(1)(iv);
■ c. Adding a new paragraph (e)(1)(iii); and
■ d. Revising newly redesignated paragraph (e)(1)(iv).

The additions and revisions read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(e) * * *

(1) * * *

(ii) The AFUE for non-weatherized gas furnaces (not including mobile home gas furnaces) manufactured on or after November 19, 2015, but before [*date 5 years after publication of the final rule*]; mobile home gas furnaces manufactured on or after November 19, 2015, but before [*date 5 years after publication of the final rule*]; non-weatherized oil-fired furnaces (not including mobile home furnaces) manufactured on or after May 1, 2013, mobile home oil-fired furnaces manufactured on or after January 1, 2015; weatherized oil-fired furnaces manufactured on or after January 1, 2015; weatherized oil-fired furnaces manufactured on or after January 1, 1992; and electric furnaces manufactured on or after January 1, 1992; shall not be less than indicated in the table below:

Product class	AFUE[1]
(A) Non-weatherized gas furnaces (not including mobile home furnaces)	80.0
(B) Mobile home gas furnaces	80.0
(C) Non-weatherized oil-fired furnaces (not including mobile home furnaces)	83.0
(D) Mobile home oil-fired furnaces	75.0
(E) Weatherized gas furnaces	81.0
(F) Weatherized oil-fired furnaces	78.0
(G) Electric furnaces	78.0

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(iii) The AFUE for non-weatherized gas (not including mobile home gas furnaces) manufactured on and after [*date 5 years after publication of the final rule*]; and mobile home gas furnaces manufactured on and after [*date 5 years after publication of the final rule*], shall not be less than indicated in the table below:

Product class	AFUE[1]
(A) Non-weatherized gas furnaces (not including mobile home gas furnaces) with a certified input capacity of greater than 55 kBtu/hr	92.0
(B) Non-weatherized gas furnaces (not including mobile home gas furnaces) with a certified input capacity of less than or equal to 55 kBtu/hr	80.0
(C) Mobile home gas furnaces	92.0

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(iv) Furnaces manufactured on and after the compliance date listed in the table below shall have an electrical standby mode power consumption ($P_{W,SB}$) and electrical off mode power consumption ($P_{W,OFF}$) not more than the following:

Product class	Maximum standby mode electrical power consumption, ($P_{W,SB}$) (watts)	Maximum off mode electrical power consumption, ($P_{W,OFF}$) (watts)	Compliance date
(A) Non-weatherized oil-fired furnaces (including mobile home oil-fired furnaces).	11.0	11.0	May 1, 2013.
(B) Electric furnaces	10.0	10.0	May 1, 2013.
(C) Non-weatherized gas furnaces (including mobile home gas furnaces).	8.5	8.5	*Date 5 years after the publication of final rule.*

* * * * *

[FR Doc. 2016–22080 Filed 9–22–16; 8:45 am]

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* **Editorial Note:** Proclamation number 9494 will not be used because a proclamation numbered 9494 appeared on the Public Inspection List on Friday September 16, 2016, but was withdrawn by the issuing agency before publication in the **Federal Register**.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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